5–7–03 Wednesday
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# Federal Register

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 7673 of May 2, 2003**

## Jewish Heritage Week, 2003

**By the President of the United States of America**

**A Proclamation**

The extraordinary heritage of Jewish Americans reflects the strength and spirit of our Nation. Their deep family and community ties and strong religious traditions exemplify America's cultural diversity. Jewish Heritage Week provides an opportunity to recognize the contributions of Jewish Americans to our country and to celebrate their commitment to faith, family, and freedom.

The Jewish people began their search for freedom more than 3,000 years ago. From the struggle of the Exodus, to the miracle of the Maccabees, to the horrors of the Holocaust, to the creation of the democratic State of Israel, Jews have faced and survived many challenges. Jews draw on their faith to provide hope for the future.

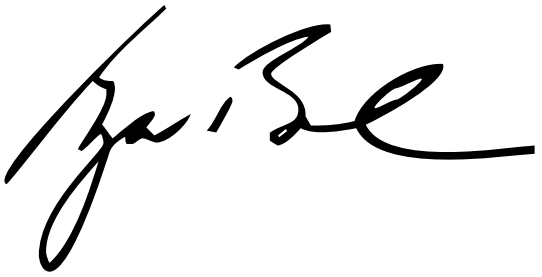
For centuries, Jews have immigrated to the United States to realize their dreams and enjoy the blessings of religious tolerance and individual liberty. Today, Jewish Americans play an important role in the success and growth of our country. Their accomplishments in education, industry, science, art, literature, and dozens of other fields have strengthened our Nation and enriched our culture.

Throughout their history, Jewish Americans have demonstrated that goodness can overcome evil. Guided by moral principles, they bring to our Nation a rich heritage that recognizes the dignity of every citizen and the possibilities of every life. Countless Jewish charitable organizations are helping serve the men, women, and children across our country who are in need. Their works of kindness and mercy help to build a more generous and compassionate Nation.

During this week, we also recognize the many Jewish Americans serving in our Armed Forces who are working to rid the world of terror and bring freedom and justice to the oppressed. Every generation of Americans must rise to meet its own challenges, and this generation of Jewish Americans is standing strong to defend our freedoms and help make America a land of opportunity for all.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 4 through May 11, 2003, as Jewish Heritage Week. I urge all Americans to learn more about the rich history of Jewish Americans and to celebrate their contribution to our cultural diversity.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of May, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–11522
Filed 5–6–03; 8:45 am]
Billing code 3195–01–P

# Rules and Regulations

Federal Register
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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### 7 CFR Part 1710

**RIN 0572–AB80**

### Useful Life of Facility Determination

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS) is changing the requirement to use depreciation rates for determining loan terms. Depreciation rates contain other variables such as cost of removal and salvage value which preclude using these rates to determine useful life of a facility when these other variables are unknown. RUS depreciation requirements for financial statement purposes remain in effect.

If the proposed useful life of a facility is deemed inappropriate by RUS, other means to establish an appropriate term for the loan will apply. Current reliance solely on depreciation rates has been determined to not be as appropriate as looking at proposals on a case-by-case basis. This rule is made as part of the RUS efforts to continually look for ways to streamline lending requirements and make regulations useful and direct.

**EFFECTIVE DATE:** May 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Patrick R. Sarver, Management Analyst, Rural Utilities Service, Electric Program, Room 4024 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560, Telephone: 202–690–2992, FAX: 202–690–0717, E-mail: *psarver@rus.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

#### Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice titled ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912 (e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies may be initiated.

#### Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

#### Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572–0032 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

#### Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

#### National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

#### Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

*Background*

RUS is authorized to make loans and loan guarantees with a final maturity of up to 35 years. The final maturity is based on the useful life of the facilities to be financed. When determining the useful life of such facilities, current regulations require that the useful life determination be consistent with the borrower's proposed depreciation rates for facilities. The depreciation requirements contained in RUS Bulletin 183–1 remain in effect for financial statement preparation and allocation of asset costs. However, depreciation rates cannot be readily converted to determine a facility's useful life.

In the electric utility industry depreciation is designed to allocate the costs of electric plant, including net salvage (cost of removal less salvage), over the estimated useful life of the plant. The depreciation rates, therefore, include components for estimated cost of removal and net salvage. In recent years net salvage has, in many cases, become a significant factor in depreciation rates. As a result, without knowing the net salvage components, the depreciation rates cannot readily be converted to determine the estimated useful life of electric plant.

RUS will continue to allow borrowers the option of utilizing the depreciation rates contained in RUS Bulletin 183–1 and avoid the cost of individual

depreciation studies to determine the components of its depreciation rates. This rule will eliminate the requirement for a useful life determination based solely upon the depreciation rates as found in Bulletin 183–1. If the useful life being proposed by the borrower is not satisfactory to RUS, the depreciation rates listed in RUS Bulletin 183–1 will no longer be used in lieu there of for loan term calculation. RUS will consider an independent evaluation, the manufacturer's estimated useful-life or RUS experience with like-property as alternatives to an unsatisfactory proposal made by the borrower. RUS views this new back-stop approach to reviewing and approving the determination of the useful life of a facility as a more appropriate method. The increased difficulties in establishing net salvage values and recent experience in using the fixed range of depreciation rates as found in Bulletin 183–1, dictates a more flexible approach.

This rule change was first issued as a proposed rule and published in the **Federal Register**, Vol. 67, No. 68, Tuesday, April 9, 2002. One comment was received in full support of the rule change and provided specific reasons why reliance on Bulletin 183–1 alone may not be the best method for determining the useful life of a facility. The RUS is making this change to regulations as part of its ongoing effort to minimize administrative burden, streamline the loan process, and update regulations to reflect current requirements. This change in regulations will provide greater latitude in establishing the useful life of a facility being financed but at the same time maintain RUS approval for making the determination.

**List of Subjects in 7 CFR Part 1710**

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

■ For the reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, is amended as follows:

## PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

■ 1. The authority citation for part 1710 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

### Subpart C—Loan Purposes and Basic Policies

■ 2. Amend § 1710.115 by revising paragraph (b) to read as follows:

**§ 1710.115 Final maturity.**

* * * * *

(b) Loans made or guaranteed by RUS for facilities owned by the borrower generally must be repaid with interest within a period, up to 35 years, that approximates the expected useful life of the facilities financed. The expected useful life shall be based on the weighted average of the useful lives that the borrower proposes for the facilities financed by the loan, provided that the proposed useful lives are deemed appropriate by RUS. RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers, submitted as part of the loan application must include, as a note, either a statement certifying that at least 90 percent of the loan funds are for facilities that have a useful life of 33 years or longer, or a schedule showing the costs and useful life of those facilities with a useful life of less than 33 years. If the useful life determination proposed by the borrower is not deemed appropriate by RUS, RUS will base expected useful life on an independent evaluation, the manufacturer's estimated useful-life or RUS experience with like-property, as applicable. Final maturities for loans for the implementation of programs for demand side management and energy resource conservation and on and off grid renewable energy sources not owned by the borrower will be determined by RUS. Due to the uncertainty of predictions over an extended period of time, RUS may add up to 2 years to the composite average useful life of the facilities in order to determine final maturity.

* * * * *

Dated: March 17, 2003.

**Hilda Gay Legg,**

*Administrator, Rural Utilities Service.*

[FR Doc. 03–11241 Filed 5–6–03; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM251, Special Conditions No. 25–234–SC]**

## Special Conditions: Raytheon HS.125 Series 700A/B Airplanes; High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Raytheon HS.125A Series 700A/B airplanes, modified by Midcoast Aviation, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Rockwell Collins Air Data Computers (ADC–87A) and ALI–80A altimeters. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is April 22, 2003. Comments must be received on or before June 6, 2003.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM251, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM251.

**FOR FURTHER INFORMATION CONTACT:** Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

**SUPPLEMENTARY INFORMATION:**

### FAA Determination as to Need for Public Process

The FAA has determined that notice and opportunity for prior public

comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected airplane. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this document between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

**Background**

On February 28, 2003, Midcoast Aviation, Inc., #14 Archview Drive, Cahokia, Illinois 62206, applied for a supplemental type certificate (STC) to modify the Raytheon HS.125 Series 700A and Series 700B airplanes approved under Type Certificate No. A3EU. The HS.125 Series 700A and Series 700B are low wing corporate jets with two Garrett AiResearch TFE–731 engines mounted on the aft fuselage. The airplane carries two crewmembers and up to 15 passengers. The maximum ramp weight varies between 24,800 Lbs. and 25,500 Lbs. depending on the fuel tanks installed. The airplane is approved to operate up to 41,000 feet altitude. The modification incorporates the installation of dual Rockwell Collins Air Data Computers (ADC–87A) and ALI–80A altimeters.

The dual Rockwell Collins ADCs and altimeters replace the existing altimetry system. This system uses electronics to a far greater extent than the original altimetry system, and may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF). The disruption of these signals could result in loss of altitude, or present misleading information to the pilot.

**Type Certification Basis**

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Midcoast Aviation, Inc. must show that the Raytheon HS.125A Series 700A/B airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU, or the applicable regulations in effect on the date of application for the change. (Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003.) The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the modified Raytheon HS.125A Series 700A/B airplanes includes 14 CFR part 25 effective February 1, 1965, as amended by Amendments 25–1 through 25–20. Other applicable amendments, regulations, and special conditions are noted in Type Certificate Data Sheet A3EU.

If the Administrator finds that the applicable airworthiness regulations (part 25, as amended) do not contain adequate or appropriate safety standards for the Raytheon HS.125 Series 700A/B airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Raytheon HS.125 Series 700A/B airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Midcoast Aviation, Inc. apply at a later date for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

**Novel or Unusual Design Features**

The Raytheon HS.125A Series 700A/B airplanes modified by Midcoast Aviation, Inc. will incorporate the installation of dual Rockwell Collins Air Data Computers (ADC–87A) and ALI–80A altimeters. Because these advanced systems use electronics to a far greater extent than the original altimetry system, they may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be a novel or unusual design feature.

**Discussion**

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon HS.125A Series 700A/B airplanes, modified by Midcoast Aviation, Inc. These special conditions require that the new dual Rockwell Collins Air Data Computers (ADC–87A) with ALI–80A altimeters, which perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

**High-Intensity Radiated Fields (HIRF)**

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-

installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 *or* 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

| Frequency | Field strength (volts per meter) | |
|---|---|---|
| | Peak | Average |
| 10 kHz–100 kHz ... | 50 | 50 |
| 100 kHz–500 kHz | 50 | 50 |
| 500 MHz–2 kHz .... | 50 | 50 |
| 2 MHz–30 MHz ..... | 100 | 100 |
| 30 MHz–70 MHz ... | 50 | 50 |
| 70 MHz–100 MHZ | 50 | 50 |
| 100 MHz–200 MHz | 100 | 100 |
| 200 MHz–400 MHz | 100 | 100 |
| 400 MHz–700 MHz | 700 | 50 |
| 700 MHz–1 GHz ... | 700 | 100 |
| 1 GHz–2 GHz ..... | 2000 | 200 |
| 2 GHz–4 GHz ..... | 3000 | 200 |
| 4 GHz–6 GHz ..... | 3000 | 200 |
| 6 GHz–8 GHz ..... | 1000 | 200 |
| 8 GHz–12 GHz ..... | 3000 | 300 |
| 12 GHz–18 GHz ... | 2000 | 200 |
| 18 GHz–40 GHz ... | 600 | 200 |

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

**Applicability**

As discussed above, these special conditions are applicable to Raytheon HS.125 Series 700A/B airplanes modified by Midcoast Aviation, Inc. to include the dual Rockwell Collins Air Data Computers (ADC–87A) and ALI–80A altimeters. Should Midcoast Aviation, Inc. apply at a later date for a supplemental type certificate to modify any other model already included on Type Certificate A3EU to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

**Conclusion**

This action affects only certain novel or unusual design features on Raytheon HS.125 Series 700A/B airplanes modified by Midcoast Aviation, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Raytheon HS.125 Series 700A/B airplanes modified by Midcoast Aviation, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on April 22, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–11228 Filed 5–6–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM252, Special Conditions No. 25–235–SC]**

## Special Conditions: McDonnell Douglas Model DC–9–81, –82, –83, and –87 Airplanes; High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for McDonnell Douglas Model DC–9–81, –82, –83, and –87 airplanes modified by Electronic Cable Specialists. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification involves installation of electronic flight displays that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is April 14, 2003. Comments must be received on or before June 6, 2003.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM252, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM252.

**FOR FURTHER INFORMATION CONTACT:** Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification

Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA has determined that notice and opportunity for public comment in accordance with 14 CFR 11.38 are unnecessary, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

However, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so without incurring expense or delay. We may change these special conditions, based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

**Background**

On September 12, 2002, Electronic Cable Specialists applied for a supplemental type certificate (STC) to modify McDonnell Douglas Model DC–9–81, –82, –83, and –87 airplanes. These airplanes are currently approved under Type Certificate A6WE. The modification installs electronic flight displays in the cockpit. The existing Captain's and First Officer's electro-mechanical attitude indicators (ADIs) and horizontal situation indicators (HSIs) will be replaced by flat panel displays with associated cockpit display controllers. These avionics/electronics and electrical systems may be vulnerable to high intensity radiated fields (HIRF) external to the airplane.

**Type Certification Basis**

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Electronic Cable Specialists must show that McDonnell Douglas Model DC–9–81, –82, –83, and –87 airplanes, as modified, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A6WE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003.

The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the McDonnell Douglas Model DC–9–81, –82, –83, and –87 airplanes includes 14 CFR part 25, effective February 1, 1965, as amended by amendments 25–1 through 25–40, except for special conditions and exceptions noted in Type Certificate A6WE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* part 25, as amended) do not contain adequate or appropriate safety standards for the McDonnell Douglas Model DC–9–81, –82, –83, and –87 airplanes modified by Electronic Cable Specialists because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Electronic Cable Specialists apply later for a supplemental type certificate to modify any other model included on Type Certificate A6WE to incorporate the same novel or unusual design features, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

**Novel or Unusual Design Features**

The McDonnell Douglas Model DC–9–81, –81, –83, and –87 airplanes modified by Electronic Cable Specialists will incorporate new electronic flight displays that perform critical functions. This system may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

**Discussion**

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the McDonnell Douglas Model DC–9–81, –82, –83, and –87 airplanes modified by Electronic Cable Specialists. These special conditions require that new avionics/ electronic and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

**High-Intensity Radiated Fields (HIRF)**

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications, coupled with electronic command and control of airplanes, the immunity of critical avionic/ electronic and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplanes will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

| Frequency | Field strength (volts per meter) | |
|---|---|---|
| | Peak | Average |
| 10 kHz–100 kHz ..... | 50 | 50 |
| 100 kHz–500 kHz ..... | 50 | 50 |
| 500 kHz–2 MHz ..... | 50 | 50 |
| 2 MHz–30 MHz ..... | 100 | 100 |
| 30 MHz–70 MHz ..... | 50 | 50 |
| 70 MHz–100 MHz ..... | 50 | 50 |
| 100 MHz–200 MHz ... | 100 | 100 |
| 200 MHz–400 MHz ... | 100 | 100 |
| 400 MHz–700 MHz ... | 700 | 50 |
| 700 MHz–1 GHz ..... | 700 | 100 |
| 1 GHz –2 GHz ..... | 2000 | 200 |
| 2 GHz–4 GHz ..... | 3000 | 200 |
| 4 GHz–6 GHz ..... | 3000 | 200 |
| 6 GHz–8 GHz ..... | 1000 | 200 |
| 8 GHz–12 GHz ..... | 3000 | 300 |
| 12 GHz–18 GHz ..... | 2000 | 200 |
| 18 GHz–40 GHz ..... | 600 | 200 |

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

**Applicability**

As discussed above, these special conditions are applicable to McDonnell Douglas Model DC–9–81, –82, –83, and –87 airplanes modified by Electronic Cable Specialists. Should Electronic Cable Specialists apply later for design change approval to modify any other model included on Type Certificate A6WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

**Conclusion**

This action affects only certain novel or unusual design features on McDonnell Douglas Model DC–9–81, –82, –83, and –87 airplanes modified by Electronic Cable Specialists. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on these airplanes.

The FAA has determined that notice and opportunity for public comment are unnecessary, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. The FAA is satisfied that new comments are unlikely and finds, therefore, that good cause exists for making these special conditions effective upon issuance.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for McDonnell Douglas Model DC–9–81, –82, –83, and –87 airplanes modified by Electronic Cable Specialists.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

*Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on April 14, 2003.

**Ali Bahrami**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–11227 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–14735; Airspace Docket No. 03–AEA–02]**

## Amendment of Class D Airspace, Rome, NY

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment removes the description of the Class D airspace designated for Rome, NY. The commissioning of the Airport Traffic Control Tower (ATCT) at Griffiss Airpark, Rome, NY has been delayed indefinitely. Therefore, the Class D airspace designated for Griffiss Airpark cannot be supported and will be removed.

**DATES:** May 7, 2003.

**ADDRESSES:** Send comments on the rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. FAA–2003–14735; Airspace Docket No. 03–AEA–02, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone (718) 553–3255. An informal docket may also be examined during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:** Although this action is a final rule, which involves the amendment of the Class D at Rome, NY, by removing that airspace designated for Griffiss Airpark, and was not preceded by notice and public procedure, comments are invited on the rule.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

**History**

**Federal Register** document 02–29902, Airspace Docket No. 02–AEA–13, published in the **Federal Register** on November 25, 2002 (67 FR 70533–70534) established the description of the Class D airspace area at Room, NY. **Federal Register** document 03–6333, Airspace Docket No. 02–AEA–13, published in the **Federal Register** on March 17, 2003 (68 FR 12582–12583) delayed the effective date of the establishment of the Class D airspace at Rome, NY. Subsequently, the commissioning date for the ATCT has been delayed indefinitely and the need for Class D airspace cannot be supported.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes the description of the Class D airspace at Rome, NY, by removing that airspace designated for Griffiss Airpark. The commissioning of the ATCT has been delayed indefinitely. As a result the Rome, NY, Class D airspace is no longer required for air safety. Class D airspace designations for airspace extending upward from the surface of the earth are published in paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1.

Under the circumstances presented, the FAA concludes that the more restrictive Class D airspace at Rome, NY is no longer supported and the flight rules pertinent to Class E airspace should apply. Accordingly, since this action merely reverts the Rome, NY, Class D airspace to Class E, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporated by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 289.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002 and effective September 16, 2002, is amended as follows:

*Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.*

* * * * *

**AEA NY D Rome, NY [Removed]**

* * * * *

Dated: Issued in Jamaica, New York on April 17, 2003.

**Loretta Martin,**

*Acting Assistant Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 03–11232 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–13–M**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. FAA–01–ANM–16]**

## Establishment of Class E Airspace at Richfield Municipal Airport, Richfield, UT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action will establish Class E5 airspace at Richfield Municipal Airport, Richfield, UT. Recently developed Area Navigation (RNAV)/Global Positioning (GPS) Standard Terminal Arrival Routes (STARs) and Departure Procedures (DPs) have made this action necessary for the containment of aircraft executing Instrument Flight Rule (IFR) operations at Richfield Municipal Airport within controlled airspace. The intended effect of this action is to provide an increased level of safety for aircraft executing IFR operations between the terminal and en route phase of flight at Richfield Municipal Airport, Richfield, UT.

**EFFECTIVE DATE:** May 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ed Haeseker, ANM–520.7; telephone (425) 227–2527; Federal Aviation Administration, Docket No. 01–ANM–16, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

**SUPPLEMENTARY INFORMATION:**

**History**

On December 2, 2002, the FAA issued a Notice of Proposed Rulemaking to amend Title 14 Code of Federal Regulations, Part 71 (14 CFR part 71) by establishing Class E5 airspace at Richfield Municipal Airport, Richfield, UT. [67 FR 71058]. The proposal would provide an increased level of safety for aircraft executing IFR operations between terminal and en route phases of flight at Richfield Municipal Airport, Richfield, UT. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. Class E5 airspace extending upward from 700 feet above the surface, is published in Paragraph 6005, of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR Part 71. The Class E5 airspace designation listed in this document will subsequently be published in the Order.

**The Rule**

This amendment to 14 CFR part 71 establishes Class E5 airspace at Richfield Municipal Airport, Richfield, UT. Class E5 controlled airspace is necessary to cotain aircraft executing IFR operations at Richfield Municipal Airport. The FAA establishes Class E5 airspace, where necessary, to contain aircraft transitioning between terminal and en route environments. This rule is designed to provide for the safe and efficient use of navigable airspace and to promote safe flight operations under IFR at Richfield Municipal Airport and between terminal and en route transition phases. The new Class E5 airspace will be depicted on aeronautical charts for pilot reference. The Coordinates for this airspace docket are based on North American Datum 83. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a

''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designation and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM CO E5 Richfield Municipal Airport, Richfield, UT**

[Lat. 38°44′11″ N, long. 112°05′56″ W.]

That airspace extending upward from 700 feet above the surface within a 7.5 mile radius of the Richfield Municipal Airport; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 39°24′30″ N., long. 112°27′41″ W.; to lat. 39°16′00″ N., long. 112°00′00″ W.; to lat. 39°42′00″ N., long. 110°54′00″ W.; to lat. 39°27′00″ N., long. 110°46′00″ W.; to lat. 39°03′00″ N., long. 110°30′00″ W., to lat. 38°32′00″ N., long. 110°42′00″ W., to lat.38°20′00″ N., long. 110°48′00″ W.; to lat. 38°40′00″ N., long. 111°47′00″ W.; to lat. 38°16′40″ N., long. 112°36′40″ W.; to lat. 38°29′00″ N., long. 112°53′00″ W.; to lat. 39°11′30″ N., long. 112°34′00″ W.; thence to the point of origin, excluding that airspace within Federal Airways and the Price, UT, Huntington, UT, Milford, UT, and Delta, UT Class E airspace.

* * * * *

Issued in Seattle, Washington, on April 11, 2003.

**ViAnne Fowler,**

*Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 03–11233 Filed 4–6–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–14454; Airspace Docket No. 03–AE–01]**

## Establishment of Class E Airspace; Lake Placid, NY

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Lake Placid, NY. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Lake Placid Airport, Lake Placid, NY under Instrument Flight rules (IFR).

**EFFECTIVE DATE:** 0901 UCT September 4, 2003

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

**History**

On March 17, 2003, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Lake Placid Airport, Lake Placid, NY was published in the Federal Register (68 FR 12621). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before April 16, 2003. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 7.5-mile radius of Lake Placid Airport, Lake Placid, NY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends 124 CFR part 71 as follows:

## PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

*Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AEA NY E5 Lake Placid, NY [NEW]**

Lake Placid Airport, NY
(Lat. 44°15′52″ N., long. 73°57′43″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Lake Placid Airport, excluding that portion that coincides with the Saranac Lake, NY Class E airspace area.

* * * * *

Issued in Jamaica, New York on April 17, 2003.

**Loretta Martin,**

*Acting Assistant Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 03–11231 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

## 15 CFR Part 270

**[Docket No: 021224331–3093–03]**

**RIN 0693–AB52**

## Procedures for Implementation of the National Construction Safety Team Act

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Director of the National Institute of Standards and Technology (NIST), Technology Administration, United States Department of Commerce, is today issuing a final rule amending regulations found at 15 CFR part 270 implementing the National Construction Safety Team Act (''Act''). An interim final rule with a request for public comments containing general provisions regarding implementation of the Act and establishing procedures for the collection and preservation of evidence obtained and the protection of information created as part of investigations conducted pursuant to the Act was published in the **Federal Register** on January 30, 2003. This final rule responds to comments received in response to the January 30, 2003 notice. The changes include clarifications and editorial corrections to several sections of the interim final rule.

**DATES:** This rule is effective on June 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. James E. Hill, Deputy Director, Building and Fire Research Laboratory, National Institute of Standards and Technology, Mail Stop 8600, Gaithersburg, MD 20899–8600, telephone number (301) 975–5900.

**SUPPLEMENTARY INFORMATION:**

### Background

The National Construction Safety Team Act, Pub. L. 107–231, was enacted to provide for the establishment of investigative teams (''Teams'') to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life. The purpose of investigations by Teams is to improve the safety and structural integrity of buildings in the United States. A Team will (1) Establish the likely technical cause or causes of the building failure; (2) evaluate the technical aspects of evacuation and emergency response procedures; (3) recommend, as necessary, specific improvements to building standards, codes, and practices based on the findings made pursuant to (1) and (2); and recommend any research and other appropriate actions needed to improve the structural safety of buildings, and improve evacuation and emergency response procedures, based on the findings of the investigation. Section 2(c)(1) of the Act requires that the Director develop procedures for certain activities to be carried out under the Act as follows: regarding conflicts of interest related to service on a Team; defining the circumstances under which the Director will establish and deploy a Team; prescribing the appropriate size of Teams; guiding the disclosure of information under section 7 of the Act; guiding the conduct of investigations under the Act; identifying and prescribing appropriate conditions for provision by the Director of additional resources and services Teams may need; to ensure that investigations under the Act do not impede and are coordinated with any search and rescue efforts being undertaken at the site of the building failure; for regular briefings of the public on the status of the investigative proceedings and findings; guiding the Teams in moving and preserving evidence; providing for coordination with Federal, State, and local entities that may sponsor research or investigations of building failures; and regarding other issues.

NIST published an interim final rule with a request for public comments in the **Federal Register** on January 30, 2003 (68 FR 4693), seeking public comment on general provisions regarding implementation of the Act and on provisions establishing procedures for the collection and preservation of evidence obtained and the protection of information created as part of investigations conducted pursuant to the Act, including guiding the disclosure of information under section 7 of the Act (§§ 270.350, 270.351, and 270.352) and guiding the Teams in moving and preserving evidence (§ 270.330). These general provisions and procedures, comprising Subparts A and D of the rule, are necessary to the conduct of the investigation of the World Trade Center disaster, already underway, and became effective immediately upon publication.

The comment period closed on March 3, 2003.

In the near future, NIST plans to publish in the **Federal Register** a notice of proposed rulemaking and request for comments, establishing the remaining procedures necessary for implementation of the Act.

### Summary of Public Comments Received by NIST in Response to the January 30, 2003 Interim Final Rule, and NIST's Response to Those Comments

NIST received two responses to the request for comments. One response was from a private, not-for-profit organization that develops international building codes. The second response was from a local government agency. A detailed analysis of the comments follows.

*Comment:* One comment encouraged NIST to use a particular code development process. The commenter offered to assist NIST in developing and advancing the necessary code change proposals that will advance the recommendations of the investigation team.

*Response:* This comment is outside the scope of this rulemaking.

*Comment:* One comment stated that the proposed rule should consider specifying the criteria for the Team's deployment.

*Response:* As required by section (c)(1)(B) of the Act, NIST will publish procedures ''defining the circumstances under which the Director will establish and deploy a Team'' in its notice of proposed rulemaking setting forth the remaining procedures necessary to implement the Act.

*Comment:* One comment stated that ''[c]onsideration should be given to the question of whether a finding or establishing of ''the likely technical cause or causes of the building failure'' will have evidentiary weight or authority'', and if so, ''consideration should also be given to mandatory rights to a hearing or other participation * * *''.

*Response:* By statute, ''[n]o part of any report resulting from such investigation, or from an investigation under the

National Construction Safety Team Act, shall be admitted as evidence or used in any suit or action for damages arising out of any matter mentioned in such report.''

*Comment:* One comment stated that the proposed regulations may conflict with and override New York City inspection and enforcement procedures. Provisions should be considered that prevent NIST from interfering with such activities.

*Response:* The Act and its implementing regulations pertain to the investigation into the technical causes of specific building failures and do not affect routine building inspections and enforcement activities by state or local government.

*Comment:* One comment stated that the requirements in the proposed regulations should include the sharing of information at all levels of City agencies, and not only by ''law enforcement'' and should include local police, fire, etc.

*Response:* NIST expects to work closely with state and local governments during NIST investigations of building failures.

*Comment:* One comment stated that although the proposed regulations permit parties to retain *copies* of documentary evidence taken by the Team, the proposed regulations do not address how parties may gain subsequent access to the original documentary evidence and/or material samples, which may be needed for the preparation of claims and defenses.

*Response:* The commenter apparently confuses the requirements for members of the public who are in possession of evidence with the requirements for investigation participants.

Section 270.313(c), which governs requests for documentary evidence from members of the public, specifically requires a request to be in writing and to include, among other items, ''(4) A request that each person to whom the request is directed produce and permit inspection and copying of the documents and physical evidence in the possession, custody, or control of that person * * *.'' Under this provision, members of the public who submit evidence to an investigation may keep the original and provide the Team a copy.

Section 270.310 governs evidence collected by investigation participants who are not NIST employees. It requires that such investigation participants transfer original evidence to NIST, and retain a copy of the evidence only if necessary to carry out their duties under the investigation. This requirement ensures that all evidence collected during the course of an investigation be held in a central location for recordkeeping and chain of custody purposes.

*Comment:* One comment stated that credentialing should be determined in collaboration with local law enforcement.

*Response:* Credentialing must be accomplished in accordance with the laws and regulations governing Federal investigations.

*Comment:* One comment suggested that NIST address the issue of when an investigation is concluded and the Team's authority dissolves.

*Response:* NIST plans to include a provision addressing this issue in its planned notice of proposed rulemaking setting forth the remaining procedures necessary to implement the Act.

*Comment:* One comment pointed out an inconsistency in the use of the terms ''evidence'' and ''information'' in § 270.310. The same commenter suggested a revision to § 270.312 to include both ''evidence'' and ''information'.

*Response:* NIST agrees that the use of both ''evidence'' and ''information'' in § 270.310 is confusing. Section 270.310 has been revised to replace the word ''information'' with the word ''evidence.'' This revision eliminates the need for the suggested revision to § 270.312.

*Comment:* One comment identified an incorrect reference in § 270.314. The reference to § 270.312 should instead refer to § 270.313.

*Response:* NIST has corrected this error.

*Comment:* One comment suggested that the term ''confidential information'' be defined in the regulations.

*Response:* NIST has deleted the sentence in § 270.312 that contains the only reference in the regulation to ''confidential information.'' The receipt and release of information is addressed elsewhere in the regulation.

*Comment:* One comment suggested that § 270.313(b) be revised by adding a requirement that requests for responses to written questions include a ''statement that the Director has established a Team, and that the Lead Investigator (name) has requested information.''

*Response:* NIST believes that the language of § 270.313(b)(1) is sufficient to make clear that the request is made under the authority of the Act.

*Comment:* One comment suggested that § 270.315 be revised by combining two of the factors the Director will consider in determining whether to issue a subpoena. Two of the factors NIST included in the interim final rule are: (1) Whether the testimony, documentary, or physical evidence is required for an investigation being conducted pursuant to the Act; and (2) Whether the evidence is relevant to the purpose of the investigation. The commenter suggested combining these two factors to read: ''(1) Whether the testimony, documentary, or physical evidence is relevant to an investigation being conducted pursuant to the Act.''

*Response:* NIST disagrees with the suggested revision. Whether evidence is relevant to an investigation is an important factor to consider; however, not all relevant evidence is necessarily required for an investigation. NIST will only issue subpoenas for relevant evidence that is required for an investigation.

*Comment:* One comment suggested that subpoenas either be signed by the General Counsel, in addition to the Director, or that subpoenas contain a statement that the General Counsel has concurred in the issuance of the subpoena. The commenter suggested that § 270.315(c)(5) be revised to reflect change.

*Response:* Neither of these suggested changes is necessary because the existing regulations require the concurrence of the General Counsel prior to issuance of a subpoena.

*Comment:* One comment suggested revising § 270.315(d)(2) by adding the words ''return receipt requested'', to require that service of a subpoena will be by certified mail, return receipt requested, or delivery to the last known residence or business address of such person or agent.

*Response:* NIST agrees. Section 270.315(d)(2) has been revised to reflect the change.

*Comment:* One comment suggested paragraph (a) of § 270.323 repeat the words ''request permission to'' before ''take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected and to carry out the duties of the Team.''

*Response:* NIST disagrees. The paragraph is clear as it was originally written.

**Additional Information**

*Executive Order 12866*

This rule has been determined not to be significant under section 3(f) of Executive Order 12866.

*Executive Order 12612*

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

*Administrative Procedure Act*

Prior notice and an opportunity for public comment are not required for this rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A).

*Regulatory Flexibility Act*

Because notice and comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. As such, a regulatory flexibility analysis is not required, and none has been prepared.

*Paperwork Reduction Act*

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

There are no collections of information involved in this rulemaking.

*National Environmental Policy Act*

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

**List of Subjects in 15 CFR Part 270**

Administrative practice and procedure; Buildings and facilities; Disaster assistance; Evidence; Investigations; National Institute of Standards and Technology; Science and technology; Subpoena.

Dated: May 2, 2003.

**Karen H. Brown,**

*Deputy Director.*

■ For the reasons set forth in the preamble, Title 15 of the Code of Federal Regulations is amended as follows:

## PART 270—NATIONAL CONSTRUCTION SAFETY TEAMS

■ 1. The authority citation for part 270 is revised to read as follows:

**Authority:** Pub. L. 107–231, 116 Stat. 1471 (15 U.S.C. 7301 *et seq.*).

■ 2. Section 270.310 is amended by revising the introductory text to read as follows:

**§ 270.310 Evidence collected by investigation participants who are not NIST employees.**

Upon receipt of evidence pursuant to an investigation under the Act, each investigation participant who is not a NIST employee shall:

* * * * *

**§ 270.312 [Amended]**

■ 3. Section 270.312 is amended by removing the last sentence.

**§ 270.314 [Amended]**

■ 4. In § 270.314, the reference to ''§ 270.312'' is revised to read ''§ 270.313''.

■ 5. Section 270.315 is amended by revising paragraph (d)(2) to read as follows:

**§ 270.315 Subpoenas.**

* * * * *

(d) * * *

(2) By certified mail, return receipt requested, or delivery to the last known residence or business address of such person or agent; or

* * *

* * * * *

[FR Doc. 03–11361 Filed 5–6–03; 8:45 am]

BILLING CODE 3510–13–P

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 232

**[Release Nos. 33–8224; 34–47766; 35–27672; 39–2407; IC–26032]**

**RIN 3235–AG96**

## Adoption of Updated EDGAR Filer Manual

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (the Commission) is adopting revisions to the EDGAR Filer Manual to reflect updates to the EDGAR system based upon recent rulemaking activity related to mandating the electronic filing, and Web site posting by issuers with corporate Web sites, of beneficial ownership reports filed by officers, directors and principal security holders under section 16(a) of the Securities Exchange Act of 1934, generally as required by section 403 of the Sarbanes-Oxley Act of 2002, as well as the fact that EDGAR will no longer accept magnetic tape cartridges as a filing medium. The new release will include a new Online Forms Internet Web site (*https://www.onlineforms.edgarfiling.sec.gov*) that will allow for the online creation and submission of ownership reports Forms 3, 4 and 5; their amendments, Forms 3/A, 4/A and 5/A; and, a minor update to EDGARLink submission template 2 to disallow the filing of the ownership forms due to the online capability. The revisions to the Filer Manual reflect these changes, most significantly, within the addition of a third Volume entitled ''EDGAR Release 8.5 OnlineForms Filer Manual Volume III.'' Volumes I and II of the Filer Manual, EDGARLink and the N–SAR Supplement respectively, have been modified, mainly, to reference the new Online Forms Web site and the removal of magnetic tape cartridges as a filing medium. Support for filing via magnetic tape cartridges is being removed due to lack of use by filers. This feature was last used officially by a filer, for a live filing, in 2001, and only by a few filers that whole year. The updated manual will be incorporated by reference into the Code of Federal Regulations.

**EFFECTIVE DATE:** May 7, 2003. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of May 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** In the Office of Information Technology, Rick Heroux at (202) 942–8800; for questions concerning Investment Management company filings, Ruth Armfield Sanders, Senior Special Counsel, or Shaswat K. Das, Senior Counsel, Division of Investment Management, at (202) 942–0978; and for questions concerning Corporation Finance company filings, Herbert Scholl, Office Chief, EDGAR and Information Analysis, Division of Corporation Finance, at (202) 942–2940.

**SUPPLEMENTARY INFORMATION:** Today we are adopting an updated EDGAR Filer Manual (Filer Manual). The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.[1] It also describes the requirements for filing using modernized EDGARLink.[2]

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (Apr. 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on September 17, 2001. See Release No. 33–8007 (September 24, 2001) [66 FR 49829].

[2] This is the filer assistance software we provide filers filing on the EDGAR system.

format.[3] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[4]

Based upon recent rulemaking activity related to mandating the electronic filing, and Web site posting by issuers with corporate Web sites, of beneficial ownership reports filed by officers, directors and principal security holders under section 16(a) of the Securities Exchange Act of 1934, generally as required by section 403 of the Sarbanes-Oxley Act of 2002, EDGAR Release 8.5 will be implemented on May 5, 2003. This release includes a new Online Forms Internet Web site (*https://www.onlineforms.edgarfiling.sec.gov*) that will support the online creation and submission of ownership reports Forms 3, 4 and 5; their amendments, Forms 3/A, 4/A and 5/A; and, a minor update to EDGARLink submission template 2 to disallow the filing of the ownership forms due to the online capability. The release also includes a patch to the EDGARLink software, which provides improved precision of the fee and interest calculations. The patch is only necessary for those filers that will assemble fee-bearing filings. EDGAR 8.5 supports backward compatibility with the current version of the EDGARLink templates. Notice of the update has previously been provided on the EDGAR filing Web site and on the Commission's public Web site. The discrete updates are reflected on the filing Web site and in the updated Filer Manual Volumes.

The new Web site has been designed to make it easier for individuals to satisfy the electronic filing obligations that will apply to them when electronic submission of these Forms is mandated later this year. Another benefit of the new release is that, in addition to the ownership reports Forms 3, 3/A, 4, 4/A, 5 and 5/A, the new EDGAR Online Forms Web site can be used for the online filing of other forms, that may be included in future SEC rulemaking activity, when they become technically available.

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0102. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is <*http://www.sec.gov/info/edgar.shtml*>. You may also obtain copies from Thomson Financial Inc, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[5] It follows that the requirements of the Regulatory Flexibility Act [6] do not apply.

The effective date for the updated Filer Manual and the rule amendments is May 7, 2003. In accordance with the APA,[7] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 8.5 is scheduled to occur on May 3, 2003, becoming available on May 5, 2003. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade.

### Statutory Basis

We are adopting the amendments to Regulation S–T under sections 6, 7, 8, 10, and 19(a) of the Securities Act,[8] sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[9] section 20 of the Public Utility Holding Company Act of 1935,[10] section 319 of the Trust Indenture Act of 1939,[11] and sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[12]

### List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

### Text of the Amendment

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

■ 2. Section 232.301 is revised to read as follows:

### § 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for filers using modernized EDGARLink are set forth in the EDGAR Release 8.5 EDGARLink Filer Manual Volume I, dated April 2003. Additional provisions applicable to Form N–SAR filers and Online Forms filers are set forth in the EDGAR Release 8.5 Filer Manual Volume II N–SAR Supplement, dated April 2003, and EDGAR Release 8.5 Online Forms Filer Manual Volume III, dated April 2003. All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 or by calling Thomson Financial Inc at (800) 638–8241. Electronic format copies are available on the Commission's Web site. The address for the Filer Manual is <*http://www.sec.gov/info/edgar.shtml*>. You can also photocopy the document at the

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[3] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[4] *See* Release Nos. 33–6977 (Feb. 23, 1993) [58 FR 14628], IC–19284 (Feb. 23, 1993) [58 FR 14848], 35–25746 (Feb. 23, 1993) [58 FR 14999], and 33–6980 (Feb. 23, 1993) [58 FR 15009] in which we comprehensively discuss the rules we adopted to govern mandated electronic filing. *See also* Release No. 33–7122 (Dec. 19, 1994) [59 FR 67752], in which we made the EDGAR rules final and applicable to all domestic registrants; Release No. 33–7427 (July 1, 1997) [62 FR 36450], in which we adopted minor amendments to the EDGAR rules; Release No. 33–7472 (Oct. 24, 1997) [62 FR 58647], in which we announced that, as of January 1, 1998, we would not accept in paper filings that we require filers to submit electronically; Release No. 34–40934 (Jan. 12, 1999) [64 FR 2843], in which we made mandatory the electronic filing of Form 13F; Release No. 33–7684 (May 17, 1999) [64 FR 27888], in which we adopted amendments to implement the first stage of EDGAR modernization; Release No. 33–7855 (April 24, 2000) [65 FR 24788], in which we implemented EDGAR Release 7.0; Release No. 33–7999 (August 7, 2001) [66 FR 42941], in which we implemented EDGAR Release 7.5; Release No. 33–8007 (September 24, 2001) [66 FR 42829], in which we implemented EDGAR Release 8.0.

[5] 5 U.S.C. 553(b).

[6] 5 U.S.C. 601–612.

[7] 5 U.S.C. 553(d)(3).

[8] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[9] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w, and 78*ll*.

[10] 15 U.S.C. 79t.

[11] 15 U.S.C. 77sss.

[12] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

By the Commission.

Dated: April 30, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–11208 Filed 5–6–03; 8:45 am]

**BILLING CODE 8010–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 310 and 358

**[Docket No. 02N–0359]**

**RIN 0910–AA01**

## Ingrown Toenail Relief Drug Products for Over-the-Counter Human Use

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule establishing conditions under which over-the-counter (OTC) ingrown toenail relief drug products containing sodium sulfide 1 percent in a gel vehicle are generally recognized as safe and effective and not misbranded. This rule also amends the regulation that lists nonmonograph active ingredients in OTC drug products for ingrown toenail relief by removing sodium sulfide from that list. This final rule is part of FDA's ongoing review of OTC drug products.

**DATES:** This rule is effective June 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of September 9, 1993 (58 FR 47602), FDA published a final rule establishing that any ingrown toenail relief drug product for OTC human use is not generally recognized as safe and effective and is misbranded. (See 21 CFR 310.538.) In that final rule, sodium sulfide 1 percent was considered effective but not safe for the temporary relief of pain associated with ingrown toenails because of its potential for causing adverse reactions, particularly burning sensations and skin irritation.

In the **Federal Register** of October 4, 2002 (67 FR 62218), after reviewing new data that had been submitted, FDA proposed to establish conditions under which OTC ingrown toenail relief drug products containing sodium sulfide 1 percent in a gel vehicle are generally recognized as safe and effective and not misbranded. The product is used with a retainer ring to keep the product at the area of application. The agency also proposed to amend the regulation (21 CFR 310.538) that lists nonmonograph active ingredients in OTC drug products for ingrown toenail relief by removing sodium sulfide from that list.

### II. Comments Received in Response to the Proposal

In response to the proposal, the agency received two comments, which are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. One comment, from a drug manufacturer, supported the agency's proposals and requested that the agency's review of the comments and publication of the final rule be completed as expeditiously as possible. The second comment, from a consumer, stated that the use of the product with a ''restraining'' ring as indicated should have a ''green light.'' The comment added that there are many people who experience the pain of an ingrown toenail, and that these products will help.

### III. The Agency's Final Conclusions

The agency concludes that the data support OTC drug monograph status for 1 percent sodium sulfide in a gel vehicle applied topically for the relief of discomfort (pain) of ingrown toenail. The product is used with a retainer ring to keep the product at the area of application. Accordingly, the agency is proposing a new monograph in part 358, subpart D (21 CFR part 358, subpart D) for ingrown toenail relief drug products that includes 1 percent sodium sulfide gel. The agency is also amending § 310.538 to state that it no longer applies to sodium sulfide.

Mandating warnings in an OTC drug monograph does not require a finding that any or all of the OTC drug products covered by the monograph actually caused an adverse event, and FDA does not so find. Nor does FDA's requirement of warnings repudiate the prior OTC drug monographs and monograph rulemakings under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that warnings are necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the Federal Food, Drug, and Cosmetic Act. This judgment balances the benefits of these drug products against their potential risks (see 21 CFR 330.10(a)).

FDA's decision to act in this instance need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.*, 252 F.3d 986, 991 (8th Cir. 2001)). To mandate warnings, or take similar regulatory action, FDA need not show, nor do we allege, actual causation. For an expanded discussion of case law supporting FDA's authority to require such warnings, see Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use, Final Rule (67 FR 72555, December 6, 2002).

### IV. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. FDA has determined that the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. As explained later in this section, FDA concludes that the final rule will not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act

does not require FDA to prepare a statement of costs and benefits for this final rule, because the rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to establish a monograph for ingrown toenail relief drug products for OTC human use and include sodium sulfide 1 percent in a gel vehicle in the monograph. This final rule provides for OTC availability of this type of product.

Manufacturers who wish to market this type of product have the standard costs associated with the introduction of any new product. These include preparation of labeling, stability testing, and implementing manufacturing procedures. Any cost incurred will be voluntary if manufacturers elect to market this type of product. This cost may vary from manufacturer to manufacturer; however, the burden on small manufacturers is not greater than that for large manufacturers. Manufacturers will not incur any costs related to proving safety and effectiveness of the active ingredient for this intended use.

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of a rule on small entities. This final rule allows manufacturers to market OTC ingrown toenail relief drug products containing sodium sulfide 1 percent in a gel vehicle without having to obtain an approved new drug application, as is currently required, and is beneficial to small entities. Thus, this final rule will not impose a significant economic burden on affected entities. Therefore, under the Regulatory Flexibility Act, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required.

## V. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

## VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

## List of Subjects

*21 CFR Part 310*

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

*21 CFR Part 358*

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 310 and 358 are amended as follows:

## PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 2. Section 310.538 is amended by removing the ingredient sodium sulfide in paragraph (a) and by adding paragraph (e) to read as follows:

### § 310.538 Drug products containing active ingredients offered over-the-counter (OTC) for use for ingrown toenail relief.

* * * * *

(e) This section does not apply to sodium sulfide labeled, represented, or promoted for OTC topical use for ingrown toenail relief in accordance with part 358, subpart D of this chapter, after June 6, 2003.

## PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 358 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 4. Part 358 is amended by adding new subpart D, consisting of §§ 358.301 to 358.350, to read as follows:

### Subpart D—Ingrown Toenail Relief Drug Products

Sec.



## Subpart D—Ingrown Toenail Relief Drug Products

### § 358.301 Scope.

(a) An over-the-counter ingrown toenail relief drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this subpart and each general condition established in § 330.1 of this chapter.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to chapter 1 of title 21 unless otherwise noted.

### § 358.303 Definitions.

As used in this subpart:

(a) *Ingrown toenail relief drug product.* A drug product applied to an ingrown toenail that relieves pain or discomfort either by softening the nail or by hardening the nail bed.

(b) *Retainer ring.* A die cut polyethylene foam pad coated on one side with medical grade acrylic pressure-sensitive adhesive. The retainer ring has slots, center-cut completely through the foam with the cut of sufficient size to allow for localization of an active ingredient in a gel vehicle to a specific target area. The retainer ring is used with adhesive bandage strips to place over the retainer ring to hold it in place.

### § 358.310 Ingrown toenail relief active ingredient.

The active ingredient of the product is sodium sulfide 1 percent in a gel vehicle. The gel vehicle is an aqueous, semisolid system with large organic molecules interpenetrated with a liquid.

### § 358.350 Labeling of ingrown toenail relief drug products.

(a) *Statement of identity.* The labeling of the product contains the established

name of the product, if any, and identifies the product as an ''ingrown toenail relief product'' or as an ''ingrown toenail discomfort reliever.''

(b) *Indications.* The labeling of the product states, under the heading ''Use,'' the following: ''for temporary relief of'' [select one or both of the following: 'pain' or 'discomfort'] ''from ingrown toenails''. Other truthful and nonmisleading statements, describing only the use that has been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading ''Warnings'':

(1) ''For external use only'' in accord with § 201.66(c)(5)(i) of this chapter.

(2) ''Do not use [bullet][1] on open sores''.

(3) ''Ask a doctor before use if you have [bullet] diabetes [bullet] poor circulation [bullet] gout''.

(4) ''When using this product [bullet] use with a retainer ring''.

(5) ''Stop use and ask a doctor if [bullet] redness or swelling of your toe increases [bullet] discharge is present around the nail [bullet] symptoms last more than 7 days or clear up and occur again within a few days''.

(d) *Directions.* The labeling of the product contains the following statements under the heading ''Directions'':

(1) ''[Bullet] adults and children 12 years and over:''

(i) ''[Bullet] wash the affected area and dry thoroughly [bullet] place retainer ring on toe with slot over the area where the ingrown nail and the skin meet. Smooth ring down firmly. [bullet] apply enough gel product to fill the slot in the ring [bullet] place round center section of bandage strip directly over the gel-filled ring to seal the gel in place. Smooth ends of bandage strip around toes.''

(ii) ''[Bullet] repeat twice daily (morning and night) for up to 7 days until discomfort is relieved or until the nail can be lifted out of the nail groove and easily trimmed''.

(2) ''[Bullet] children under 12 years: ask a doctor''.

[1]See § 201.66(b)(4) of this chapter for definition of bullet.

Dated: April 23, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–11285 Filed 5–6–03; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9058]**

**RIN 1545–AY48**

## Guidance Under Section 817A Regarding Modified Guaranteed Contracts

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations affecting insurance companies that define the interest rate to be used with respect to certain insurance contracts that guarantee higher returns for an initial, temporary period. Specifically, the final regulations define the appropriate interest rate to be used in the determination of tax reserves and required interest for certain modified guaranteed contracts. The final regulations also address how temporary guarantee periods that extend past the end of a taxable year are to be taken into account.

**DATES:** *Effective Date:* These regulations are effective as of May 7, 2003.

*Applicability Date:* For dates of applicability, *see* § 1.817A–1(d).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Ann H. Logan, 202–622–3970 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

On June 3, 2002, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–248110–96) under section 817A of the Internal Revenue Code (Code) in the **Federal Register** (67 FR 38214). The notice was corrected in the **Federal Register** (67 FR 41653) on June 19, 2002. The proposed regulations were designed, in part, to reflect the addition of section 817A to the Code by section 1612 of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755). No one requested to speak at the public hearing scheduled for August 27, 2002. Accordingly, the public hearing was canceled on August 15, 2002 (67 FR 53327). Comments in response to the notice of proposed rulemaking were received and are addressed in the following Explanation and Summary of Comments. After consideration of all the comments, this document adopts the proposed regulations as revised by this Treasury decision. In addition, previous guidance under section 817A is revoked.

### Explanation and Summary of Comments

Two comments were filed with the Office of the Chief Counsel of the Internal Revenue Service. Both commentators generally agreed with the decisions incorporated in the proposed regulations. However, both commentators raised concern as to the interaction of the interest rates to be used for the reserve computations for modified guaranteed contracts (MGCs) with the reserve computation rules of section 811(d). That provision imposes an additional reserve computation rule for contracts that guarantee beyond the end of the taxable year payment or crediting of amounts in the nature of interest in excess of the greater of the prevailing state assumed interest rate or the applicable Federal interest rate. In those circumstances, section 811(d) requires that the contract's future guaranteed benefits be determined as though the interest in excess of the greater of the prevailing state assumed interest rate or the applicable Federal rate were guaranteed only to the end of the taxable year.

Material was submitted as to the possible distortion of taxable income with respect to MGCs in declining interest rate environments. Notably, in cases where the interest rate required to be used under the regulations as proposed falls below the contract crediting rate during the guarantee period, section 811(d) will operate in a manner that does not match taxable income to actual income. As section 811(d) precludes taking future guaranteed interest amounts into account, examples showed that income distortion could occur under this fact pattern.

After review of the comments, the proposed regulations have been amended to waive section 811(d) throughout the guarantee period of non-equity-indexed MGCs.

### Effect on Other Documents

Notice 97–32 is revoked as of May 7, 2003. Accordingly, the notice may continue to be used by taxpayers if they wish through the effective date of these final regulations.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking were submitted to the Small Business Administration for comment on the regulations' impact on small business.

**Drafting Information**

The principal author of these proposed regulations is Ann H. Logan, Office of the Associate Chief Counsel (Financial Institutions and Products), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the IRS and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part I**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAX

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.807–2 also issued under 26 U.S.C. 817A(e) * * *

Section 1.811–3 also issued under 26 U.S.C. 817A(e) * * *

Section 1.812–9 also issued under 26 U.S.C. 817A(e) * * *

Section 1.817A–1 also issued under 26 U.S.C. 817A(e) * * *

■ **Par. 2.** Section 1.807–2 is added to read as follows:

**§ 1.807–2 Cross-reference.**

For special rules regarding the treatment of modified guaranteed contracts (as defined in section 817A and § 1.817A–1(a)(1)), *see* § 1.817A–1.

■ **Par. 3.** Section 1.811–3 is added to read as follows:

**§ 1.811–3 Cross-reference.**

For special rules regarding the treatment of modified guaranteed contracts (as defined in section 817A and § 1.817A–1(a)(1)), *see* § 1.817A–1.

■ **Par. 4.** Section ''1.812–9 is added to read as follows:

**§ 1.812–9 Cross-reference.**

For special rules regarding the treatment of modified guaranteed contracts (as defined in section 817A and § 1.817A–1(a)(1)), *see* § 1.817A–1.

■ **Par. 5.** Sections § 1.817A–0 and § 1.817A–1 are added to read as follows:

**§ 1.817A–0 Table of contents.**

This section lists the captions that appear in section § 1.817A–1:

**§ 1.817A–1 Certain modified guaranteed contracts.**

(a) Definitions.
(1) Modified guaranteed contract.
(2) Temporary guarantee period.
(3) Equity-indexed modified guaranteed contract.
(4) Non-equity-indexed modified guaranteed contract.
(5) Current market rate for non-equity-indexed modified guaranteed contract.
(6) Current market rate for equity-indexed modified guaranteed contract.
[Reserved.]
(b) Applicable interest rates for non-equity-indexed modified guaranteed contracts.
(1) Tax reserves during temporary guarantee period.
(2) Required interest during temporary guarantee period.
(3) Application of section 811(d).
(4) Periods after the end of the temporary guarantee period.
(5) Examples.
(c) Applicable interest rates for equity-indexed modified guaranteed contracts.
[Reserved.]
(d) Effective date.

**§ 1.817A–1 Certain modified guaranteed contracts.**

(a) *Definitions*—(1) *Modified guaranteed contract.* The term *modified guaranteed contract* (MGC) is defined in section 817A(d) as an annuity, life insurance, or pension plan contract (other than a variable contract described in section 817) under which all or parts of the amounts received under the contract are allocated to a segregated account. Assets and reserves in this segregated account must be valued from time to time with reference to market values for annual statement purposes. Further, an MGC must provide either for a net surrender value or for a policyholder's fund (as defined in section 807(e)(1)). If only a portion of a contract is not described in section 817, such portion is treated as a separate contract for purposes of applying section 817A.

(2) *Temporary guarantee period.* An MGC may temporarily guarantee a return other than the permanently guaranteed crediting rate for a period specified in the contract (the *temporary guarantee period*). During the temporary guarantee period, the amount paid to the policyholder upon surrender is usually increased or decreased by a market value adjustment, which is determined by a formula set forth under the terms of the MGC.

(3) *Equity-indexed modified guaranteed contract.* An equity-indexed MGC is an MGC, as defined in paragraph (a)(1) of this section, that provides a return during or at the end of the temporary guarantee period based on the performance of stocks, other equity instruments, or equity-based derivatives.

(4) *Non-equity-indexed modified guaranteed contract.* A non-equity-indexed MGC is an MGC, as defined in paragraph (a)(1) of this section, that provides a return during or at the end of the temporary guarantee period not based on the performance of stocks, other equity instruments, or equity-based derivatives.

(5) *Current market rate for non-equity-indexed modified guaranteed contracts.* The current market rate for a non-equity-indexed MGC issued by an insurer (whether issued in that tax year or a previous one) is the appropriate Treasury constant maturity interest rate published by the Board of Governors of the Federal Reserve System for the month containing the last day of the insurer's taxable year. The appropriate rate is that rate published for Treasury securities with the shortest published maturity that is greater than (or equal to) the remaining duration of the current temporary guarantee period under the MGC.

(6) *Current market rate for equity-indexed modified guaranteed contracts.* [Reserved]

(b) *Applicable interest rates for non-equity-indexed modified guaranteed contracts*—(1) *Tax reserves during temporary guarantee period.* An insurance company is required to determine the tax reserves for an MGC under sections 807(c)(3) or (d)(2). During a non-equity-indexed MGC's temporary guarantee period, the applicable interest rate to be used under sections 807(c)(3) and (d)(2)(B) is the current market rate, as defined in paragraph (a)(5) of this section.

(2) *Required interest during temporary guarantee period.* During the temporary guarantee period of a non-equity-indexed MGC, the applicable interest rate to be used to determine required interest under section 812(b)(2)(A) is the same current market rate, defined in paragraph (a)(5) of this section, that applies for that period for purposes of sections 807(c)(3) or (d)(2)(B).

(3) *Application of section 811(d).* An additional reserve computation rule applies under section 811(d) for contracts that guarantee certain interest payments beyond the end of the taxable year. Section 811(d) is waived for non-equity-indexed MGCs.

(4) *Periods after the end of the temporary guarantee period.* For periods after the end of the temporary guarantee period, sections 807(c)(3), 807(d)(2)(B), 811(d) and 812(b)(2)(A) are not modified when applied to non-equity-indexed MGCs. None of these sections are affected by the definition of current market rate contained in paragraph (a)(5) of this section once the temporary guarantee period has expired.

(5) *Examples.* The following examples illustrate this paragraph (b):

*Example 1.* (i) *IC,* a life insurance company as defined in section 816, issues a MGC (the Contract) on August 1 of 1996. The Contract is an annuity contract that gives rise to life insurance reserves, as defined in section 816(b). *IC* is a calendar year taxpayer. The Contract guarantees that interest will be credited at 8 percent per year for the first 8 contract years and 4 percent per year thereafter. During the 8-year temporary guarantee period, the Contract provides for a market value adjustment based on changes in a published bond index and not on the performance of stocks, other equity instruments or equity based derivatives. IC has chosen to avail itself of the provisions of these regulations for 1996 and taxable years thereafter. The 10-year Treasury constant maturity interest rate published for December of 1996 was 6.30 percent. The next shortest maturity published for Treasury constant maturity interest rates is 7 years. As of the end of 1996, the remaining duration of the temporary guarantee period for the Contract was 7 years and 7 months.

(ii) To determine under section 807(d)(2) the end of 1996 reserves for the Contract, *IC* must use a discount interest rate of 6.30 percent for the temporary guarantee period. The interest rate to be used in computing required interest under section 812(b)(2)(A) for 1996 reserves is also 6.30 percent.

(iii) The discount rate applicable to periods outside the 8-year temporary guarantee period is determined under sections 807(c)(3), 807(d)(2)(B), 811(d) and 812(b)(2)(A) without regard to the current market rate.

*Example 2.* Assume the same facts as in *Example 1* except that it is now the last day of 1998. The remaining duration of the temporary guarantee period under the Contract is now 5 years and 7 months. The 7-year Treasury constant maturity interest rate published for December of 1998 was 4.65 percent. The next shortest duration published for Treasury constant maturity interest rates is 5 years. A discount rate of 4.65 percent is used for the remaining duration of the temporary guarantee period for the purpose of determining a reserve under section 807(d) and for the purpose of determining required interest under section 812(b)(2)(A).

*Example 3.* Assume the same facts as in *Example 1* except that it is now the last day of 2001. The remaining duration of the temporary guarantee period under the Contract is now 2 years and 7 months. The 3-year Treasury constant maturity interest rate published for December of 2001 was 3.62 percent. The next shortest duration published for Treasury constant maturity interest rates is 2 years. A discount rate of 3.62 percent is used for the remaining duration of the temporary guarantee period for the purpose of determining a reserve under section 807(d) and for the purpose of determining required interest under section 812(b)(2)(A).

(c) *Applicable interest rates for equity-indexed modified guaranteed contracts.* [Reserved.]

(d) *Effective date.* Paragraphs (a), (b) and (d) of this section are effective on May 7, 2003. However, pursuant to section 7805(b)(7), taxpayers may elect to apply those paragraphs retroactively for all taxable years beginning after December 31, 1995, the effective date of section 817A.

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

Approved: April 25, 2003.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

[FR Doc. 03–11211 Filed 5–6–03; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9057]**

**RIN 1545–BB39**

## Guidance Under Section 1502; Amendment of Waiver of Loss Carryovers From Separate Return Limitation Years

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations under section 1502 that permit the amendment of certain elections to waive the loss carryovers of an acquired subsidiary. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. These regulations apply to corporations filing consolidated returns. This document also provides notice of a public hearing on these temporary and proposed regulations.

**DATES:** *Effective Date:* These regulations are effective May 7, 2003.

*Applicability Date:* For dates of applicability, see § 1.1502–20T(i)(3)(viii)(C), § 1.1502–20T(i)(5)(ii), and § 1.1502–32T(b)(4)(vii)(F). The applicability of these sections expires on May 8, 2006.

**FOR FURTHER INFORMATION CONTACT:** Alison G. Burns or Jeffrey B. Fienberg (202) 622–7930 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these regulations has been previously reviewed and approved by the Office of Management and Budget under control number 1545–1774. Responses to this collection of information are required to obtain a benefit. This collection of information is revised by these regulations. These amended regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the revised collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1774.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble of the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background and Explanation of Provisions

In 1991, the IRS and Treasury Department promulgated § 1.1502–20 setting forth rules regarding the extent to which a loss recognized by a member

of a consolidated group on the disposition of stock of a subsidiary member of the same group was allowed and the extent to which the basis of subsidiary member stock was required to be reduced prior to its deconsolidation. Section 1.1502–20 provides that a loss recognized by a group member on the disposition of subsidiary member stock is allowable only to the extent it exceeds the sum of ''extraordinary gain dispositions,'' ''positive investment adjustments,'' and ''duplicated loss.'' In addition, it provides that the basis of subsidiary member stock that is deconsolidated is reduced to its value to the extent of the sum of the same amounts immediately prior to its deconsolidation. The duplicated loss amount equals the sum of the aggregated adjusted basis of the assets of the subsidiary (other than any stock and securities that the subsidiary owns in another member), the losses attributable to the subsidiary that are carried forward to the subsidiary's first taxable year following the disposition or deconsolidation, and any deferred deductions of the subsidiary, over the sum of the value of the subsidiary's stock and its liabilities.

Section 1.1502–32(b)(4) provides that, if a subsidiary has a loss carryover from a separate return limitation year when it becomes a member of a consolidated group, the group may make an election to treat all or any portion of the loss carryover as expiring immediately before the subsidiary becomes a member of the consolidated group. This election allows an acquiring group to prevent the loss of stock basis that otherwise would result if the subsidiary's loss carryovers were to expire before the group could absorb them. See § 1.1502–32(b)(2)(iii). Section 1.1502–32(b)(4) further provides that, if the subsidiary was a member of another group immediately before it became a member of the consolidated group, the losses are treated as expiring immediately after the subsidiary ceases to be a member of the prior group. The election described in § 1.1502–32(b)(4) may be made by identifying either the amount of each loss carryover deemed to expire or the amount of each loss carryover deemed not to expire.

If stock of a subsidiary with loss carryovers is sold by one consolidated group to another and the acquiring group waives all or a portion of the subsidiary's loss carryovers pursuant to § 1.1502–32(b)(4), the selling group can exclude the waived loss carryovers from its computation of duplicated loss. In certain cases, the waiver could have the effect of increasing the amount of stock loss allowed on the disposition of subsidiary stock or reducing the basis reduction required on the deconsolidation of subsidiary stock. The IRS and Treasury understand that certain waivers of loss carryovers that were made pursuant to § 1.1502–32(b)(4) were made so as to increase the amount of allowed loss on a disposition of subsidiary stock.

In *Rite Aid Corp.* v. *United States,* 255 F.3d 1357 (Fed. Cir. 2001), the United States Court of Appeals for the Federal Circuit held that the duplicated loss component of § 1.1502–20 was an invalid exercise of regulatory authority. In response to the *Rite Aid* decision, on March 7, 2002, the IRS and Treasury Department filed with the **Federal Register** temporary regulations under sections 337(d) and 1502 governing the determination of a consolidated group's allowable stock loss and basis reduction required on a disposition or deconsolidation of subsidiary member stock. Under the temporary regulations, consolidated groups can compute the allowable loss or the basis reduction required on dispositions and deconsolidations of subsidiary stock before March 7, 2002, and certain dispositions and deconsolidations of subsidiary stock on or after March 7, 2002, by applying § 1.1502–20 in its entirety, by applying the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T. See § 1.1502–20T(i)(2).

The IRS and Treasury Department believe that in certain cases in which a selling group elects to compute the allowable loss or the basis reduction required on a disposition or deconsolidation of subsidiary member stock by applying § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T, it is appropriate to permit an acquiring group to amend certain prior waivers of loss carryovers. The following paragraphs describe these cases and the amendments that this document makes to §§ 1.1502–20T and 1.1502–32T to allow certain amendments to prior waivers of loss carryovers.

*Prior Waivers of Loss Carryovers Made To Increase Allowable Loss or Reduce Basis Reduction Required*

If a selling group elects to compute the allowable loss or the basis reduction required on a disposition or deconsolidation of subsidiary stock by applying the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T, the acquiring group's prior waiver of loss carryovers of the subsidiary or lower-tier corporation of such subsidiary will have no effect on the selling group's allowable loss or the basis reduction required with respect to the disposed of or deconsolidated subsidiary stock. To the extent, therefore, that an acquiring group made an election to waive loss carryovers to increase the allowable loss or to reduce the basis reduction required with respect to the disposed of or deconsolidated subsidiary stock, the IRS and Treasury Department believe that the acquiring group should be permitted to amend such waivers to decrease, to a limited extent, the amounts of loss carryovers deemed to expire.

Accordingly, the regulations contained in this document provide that, if the acquiring group made an election pursuant to § 1.1502–32(b)(4) to waive a subsidiary's loss carryovers, that election increased the amount of the allowable loss or reduced the basis reduction required with respect to the disposed of or deconsolidated subsidiary stock, and the selling group elects to compute the allowable loss or the basis reduction required with respect to the disposed of or deconsolidated subsidiary stock by applying the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T, then the acquiring group may reduce the amount of any loss carryover deemed to expire (or increase the amount of any loss carryover deemed not to expire) as a result of the election made pursuant to § 1.1502–32(b)(4). The aggregate amount of loss carryovers that may be treated as not expiring as a result of such an amendment of a waiver of a loss carryover of the subsidiary the stock of which is disposed of or deconsolidated and any lower-tier corporation of such subsidiary, however, may not exceed the duplicated loss with respect to the disposed of or deconsolidated subsidiary stock. This limitation is intended to ensure that all of the loss carryovers that do not expire as a result of the amendment did, in fact, increase the amount of the allowable loss or reduce the basis reduction required with respect to the disposed of or deconsolidated subsidiary stock. In addition, to enable the acquiring group's use of loss carryovers that are not deemed to expire as a result of such an amendment, these regulations permit a selling group to reapportion separate, subgroup, and consolidated section 382 limitations.

*Inadvertent Waivers of Loss Carryovers*

A selling group's election to compute the allowable loss or the basis reduction required on a disposition or deconsolidation of subsidiary stock by applying the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T, may result in a reduction of the amount of losses treated as reattributed to the selling group pursuant to an election described in § 1.1502–20(g). To the extent that losses treated as reattributed to the selling group are reduced, the losses of a subsidiary are increased. In this case, if the acquiring group made an election to waive certain loss carryovers of the subsidiary by identifying those losses that were deemed not to expire, it may have inadvertently waived those losses that are treated as losses of the subsidiary as a result of the election by the selling group. The IRS and Treasury Department believe that such acquiring groups should be permitted to make certain amendments of such waivers.

Accordingly, these regulations permit acquiring groups to amend an election made pursuant to § 1.1502–32(b)(4) where the group of which the subsidiary was a member immediately before the acquisition (the prior group) elected to determine the amount of the allowable loss or the basis reduction required with respect to the stock of the subsidiary or a higher-tier corporation of the subsidiary by applying § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T, the subsidiary's loss carryovers are increased by such election by the prior group, and the acquiring group made an election pursuant to § 1.1502–32(b)(4) by identifying those losses that would be deemed not to expire. In this case, pursuant to these regulations, the acquiring group may amend its election made pursuant to § 1.1502–32(b)(4) to provide that all or a portion of the loss carryovers of the subsidiary that are treated as loss carryovers of the subsidiary as a result of the prior group's election are deemed not to expire.

The regulations contained in this document only permit acquiring groups to reduce the amount of loss carryovers deemed to expire, or increase the amount of loss carryovers deemed not to expire, as a result of an election under § 1.1502–32(b)(4). The regulations, however, do not permit acquiring groups to increase the amount of loss carryovers deemed to expire, or reduce the amount of loss carryovers deemed not to expire, as a result of such an election. The regulations, therefore, permit increases, but not decreases, of the amount of loss carryovers available to acquiring groups.

*Limited Extension of Time To Apply Alternative Regime*

In addition to the provisions described above, the regulations include a limited extension of time for selling groups to make an election to compute the allowable loss or the basis reduction required on a disposition or deconsolidation of subsidiary stock by applying the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or by applying the provisions of § 1.337(d)–2T, if the acquiring group is otherwise eligible to amend an election under § 1.1502–32(b)(4) pursuant to these regulations, but the time period during which the selling group could make its election has or has almost expired.

*Additional Adjustments*

In promulgating § 1.1502–20T and related provisions, the IRS and Treasury have attempted to ameliorate where possible the situation of groups that relied on the provisions of § 1.1502–20 in prior periods. The IRS and Treasury recognize that the loss disallowance rule in § 1.1502–20 affected the manner in which some transactions were structured. For example, some groups caused subsidiaries to sell their assets rather than engage in stock sales subject to loss disallowance under § 1.1502–20. Alternatively, groups may have engaged in deemed asset sales under § 338(h)(10). The IRS and Treasury believe that transactions cast in the form of actual or deemed asset sales should not be undone, notwithstanding the possible role of § 1.1502–20 in their planning. However, as was the case with the relief provided earlier in § 1.1502–20T and its related amendments, the IRS and Treasury have concluded that relief is appropriate and administrable in the situation that is the subject of these temporary regulations.

**Special Analyses**

In light of the Federal Circuit's decision in *Rite Aid Corp.* v. *United States,* 255 F.3d 1357 (Fed. Cir. 2001), these temporary regulations are necessary to provide taxpayers with immediate guidance regarding the amendment of certain elections to waive the loss carryovers of an acquired subsidiary. Without such immediate guidance, taxpayers may not be able to avail themselves of the relief provided for in these regulations. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3). For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to § 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact.

**Drafting Information**

The principal author of these regulations is Jeffrey B. Fienberg, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.1502–20T also issued under 26 U.S.C. 1502. * * *

Section 1.1502–32T also issued under 26 U.S.C. 1502. * * *

■ **Par. 2.** In § 1.1502–20T paragraph (i)(5) is redesignated as paragraph (i)(6).

■ **Par. 3.** Section 1.1502–20T is amended by adding paragraphs (i)(3)(viii) and (i)(5) to read as follows:

**§ 1.1502–20T—Disposition or deconsolidation of subsidiary stock (temporary).**

* * * * *

(i) * * *

(3) * * *

(viii) *Apportionment of section 382 limitation in the case of an amendment of an election made pursuant to § 1.1502–32(b)(4).* (A) *In general.* If, in connection with a disposition or deconsolidation of subsidiary stock, the subsidiary the stock of which was disposed of or deconsolidated became a member of another consolidated group (the acquiring group), and, pursuant to § 1.1502–32T(b)(4)(vii), the acquiring group amends an election made pursuant to § 1.1502–32(b)(4) to treat all or a portion of the loss carryovers of

such subsidiary (or a lower-tier corporation of such subsidiary) as expiring for all Federal income tax purposes, then the common parent may reapportion a separate, subgroup, or consolidated section 382 limitation with respect to such subsidiary or lower-tier corporation in a manner consistent with the principles of paragraph (i)(3)(iii)(A) through (D) of this section. Any reapportionment of a section 382 limitation made pursuant to the previous sentence shall have the effects described in paragraph (i)(3)(iii)(D)(*ii*) and (*iii*) of this section. For purposes of this section, a lower-tier corporation is a corporation that was a member of the group of which the subsidiary was a member immediately before becoming a member of the acquiring group and that became a member of the acquiring group as a result of the subsidiary becoming a member of the acquiring group.

(B) *Time and manner of adjustment of apportionment of section 382 limitation.* The common parent must include a statement entitled *Adjustment of Apportionment of Section 382 Limitation in Connection with Amendment of Election under § 1.1502–32(b)(4)* with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before May 7, 2003 or with or as part of an amended return filed before the date the original return for the taxable year that includes May 7, 2003 is due (with regard to extensions). The statement must set forth the name and employer identification number (E.I.N.) of the subsidiary and both the original and the adjusted apportionment of a separate section 382 limitation, a subgroup section 382 limitation, and a consolidated section 382 limitation, as applicable. The requirements of this paragraph (i)(3)(viii)(B) will be treated as satisfied if the information required by this paragraph (i)(3)(viii)(B) is included in the statement required by paragraph (i)(4) of this section rather than in a separate statement.

(C) *Effective date.* This paragraph (i)(3)(viii) is applicable on and after May 7, 2003.

* * * * *

(5) *Special time for filing election in the case of a waiver under § 1.1502–32(b)(4).* (i) *In general.* Notwithstanding the provisions of paragraph (i)(4) of this section, the election to determine allowable loss or basis reduction provided in this paragraph (i) may be made by including the statement required by paragraph (i)(4) of this section with or as part of an original or amended return that is filed on or before June 15, 2003, if—

(A) The group that includes the acquirer of the subsidiary stock made an election pursuant to § 1.1502–32(b)(4) to treat all or a portion of the loss carryovers of the subsidiary (or a lower-tier corporation of such subsidiary) as expiring for all Federal income tax purposes;

(B) The timely filing of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii) of this section would permit the acquiring group to amend its election under § 1.1502–32(b)(4) pursuant to § 1.1502–32T(b)(4)(vii);

(C) June 6, 2003 is after the date the original return of the consolidated group for the taxable year that includes March 7, 2002, is due (including extensions); and

(D) The statement required by paragraph (i)(4) of this section specifies that the filing of the election is permitted under this paragraph (i)(5).

(ii) *Effective date.* This paragraph (i)(5) is applicable on and after May 7, 2003.

* * * * *

■ **Par. 4.** Section 1.1502–32T is amended by adding paragraph (b)(4)(vii) to read as follows:

**§ 1.1502–32T—Investment adjustments (temporary).**

* * * * *

(b) * * *

(4) * * *

(vii) *Special rules for amending waiver of loss carryovers from separate return limitation year*—(A) *Waivers that increased allowable loss or reduced basis reduction required.* If, in connection with the acquisition of S, the group made an election pursuant to § 1.1502–32(b)(4) to treat all or any portion of S's loss carryovers as expiring, and the prior group elected to determine the amount of the allowable loss or the basis reduction required with respect to the stock of S or a higher-tier corporation of S by applying the provisions described in § 1.1502–20T(i)(2)(i) or (ii), then the group may reduce the amount of any loss carryover deemed to expire (or increase the amount of any loss carryover deemed not to expire) as a result of the election made pursuant to § 1.1502–32(b)(4). The aggregate amount of loss carryovers that may be treated as not expiring as a result of amendments made pursuant to this paragraph (b)(4)(vii)(A) with respect to S and any higher- and lower-tier corporation of S may not exceed the amount described in § 1.1502–20(c)(1)(iii) with respect to the acquired stock (computed without regard to the effect of the group's election or elections pursuant to § 1.1502–32(b)(4), but with regard to the effect of the prior group's election pursuant to § 1.1502–20(g), if any, prior to the application of § 1.1502–20T(i)(3)). For purposes of determining the aggregate amount of loss carryovers that may be treated as not expiring as a result of amendments made pursuant to this paragraph (b)(4)(vii)(A) with respect to S and any higher- and lower-tier corporation of S, the group may rely on a written notification provided by the prior group. Nothing in this paragraph shall be construed as permitting a group to increase the amount of any loss carryover deemed to expire (or reduce the amount of any loss carryover deemed not to expire) as a result of the election made pursuant to § 1.1502–32(b)(4).

(B) *Inadvertent waivers of loss carryovers previously subject to an election described in § 1.1502–20(g).* If, in connection with the acquisition of S, the group made an election pursuant to § 1.1502–32(b)(4) to waive loss carryovers of S by identifying the amount of each loss carryover deemed not to expire, the prior group elected to determine the amount of the allowable loss or the basis reduction required with respect to the stock of S or a higher-tier corporation of S by applying the provisions described in § 1.1502–20T(i)(2)(i) or (ii), and the amount of S's loss carryovers treated as reattributed to the prior group pursuant to the election described in § 1.1502–20(g) is reduced pursuant to § 1.1502–20T(i)(3), then the group may amend its election made pursuant to § 1.1502–32(b)(4) to provide that all or a portion of the loss carryovers of S that are treated as loss carryovers of S as a result of the prior group's election to apply the provisions described in § 1.1502–20T(i)(2)(i) or (ii) are deemed not to expire. This paragraph (b)(4)(vii)(B), however, does not permit a group to reduce the amount of any loss carryover deemed not to expire as a result of the election made pursuant to § 1.1502–32(b)(4).

(C) *Time and manner of amending an election under § 1.1502–32(b)(4).* The amendment of an election made pursuant to § 1.1502–32(b)(4) must be made in a statement entitled *Amendment of Election to Treat Loss Carryover as Expiring Under § 1.1502–32(b)(4) Pursuant to § 1.1502–32T(b)(4)(vii).* The statement must be filed with or as part of any timely filed (including extensions) original return for the taxable year that includes May 7, 2003 or with or as part of an amended return filed before the date the original return for the taxable year that includes May 7, 2003 is due (with regard to extensions). A separate statement shall

be filed for each election made pursuant to § 1.1502–32(b)(4) that is being amended pursuant to this paragraph (b)(4)(vii). For purposes of making this statement, the group may rely on the statements set forth in a written notification provided by the prior group. The statement filed under this paragraph must include the following—

(*1*) The name and employer identification number (E.I.N.) of S;

(*2*) In the case of an amendment made pursuant to paragraph (b)(4)(vii)(A), a statement that the group has received a written notification from the prior group confirming that the group's prior election or elections pursuant to § 1.1502–32(b)(4) had the effect of either increasing the prior group's allowable loss on the disposition of subsidiary stock or reducing the prior group's amount of basis reduction required;

(*3*) The amount of each loss carryover of S deemed to expire (or the amount of loss carryover deemed not to expire) as set forth in the election made pursuant to § 1.1502–32(b)(4);

(*4*) The amended amount of each loss carryover of S deemed to expire (or the amended amount of loss carryover deemed not to expire); and

(*5)* In the case of an amendment made pursuant to paragraph (b)(4)(vii)(A) of this section, a statement that the aggregate amount of loss carryovers of S and any higher- and lower-tier corporation of S that will be treated as not expiring as a result of amendments made pursuant to paragraph (b)(4)(vii)(A) of this section will not exceed the amount described in § 1.1502–20(c)(1)(iii) with respect to the acquired stock (computed without regard to the effect of the group's election or elections pursuant to § 1.1502–32(b)(4), but with regard to the effect of the prior group's election pursuant to § 1.1502–20(g), if any, prior to the application of § 1.1502–20T(i)(3)).

(D) *Items taken into account in open years.* An amendment to an election made pursuant to § 1.1502–32(b)(4) affects the group's items of income, gain, deduction or loss only to the extent that the amendment gives rise, directly or indirectly, to items or amounts that would properly be taken into account in a year for which an assessment of deficiency or a refund for overpayment, as the case may be, is not prevented by any law or rule of law. Under this paragraph, if the year to which a loss previously deemed to expire as a result of an election made pursuant to § 1.1502–32(b)(4) is deemed not to expire as a result of an election made pursuant to this paragraph would have been carried back or carried forward is a year for which a refund of overpayment is prevented by law, then to the extent that the absorption of such loss in such year would have affected the tax treatment of another item (*e.g.*, another loss that was absorbed in such year) that has an effect in a year for which a refund of overpayment is not prevented by any law or rule of law, the amendment to the election made pursuant to § 1.1502–32(b)(4) will affect the treatment of such other item. Therefore, if the absorption of such loss (the first loss) in a year for which a refund of overpayment is prevented by law would have prevented the absorption of another loss (the second loss) in such year and such second loss would have been carried to and used in a year for which a refund of overpayment is not prevented by any law or rule of law (the other year), the amendment of the election makes the second loss available for use in the other year.

(E) *Higher- and lower-tier corporations of S.* A higher-tier corporation of S is a corporation that was a member of the prior group and, as a result of such higher-tier corporation becoming a member of the group, S became a member of the group. A lower-tier corporation of S is a corporation that was a member of the prior group and became a member of the group as a result of S becoming a member of the group.

(F) *Effective date.* This paragraph (b)(4)(vii) is applicable on and after May 7, 2003.

* * * * *

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

Approved: April 25, 2003.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

[FR Doc. 03–11209 Filed 5–6–03; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 948

**[WV–092–FOR]**

## West Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving a proposed amendment to the West Virginia surface coal mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment consists of changes to the Code of West Virginia (W. Va. Code) as contained in Senate Bill 603. The amendment concerns reclamation plan requirements and authorizes the submittal and inclusion of master land use plans for postmining land use in permit application reclamation plans. The amendments are intended to improve the effectiveness of the West Virginia program.

**EFFECTIVE DATE:** May 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158; Internet address: *chfo@osmre.gov.*

**SUPPLEMENTARY INFORMATION**



### I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

### II. Submission of the Amendment

By letter dated May 21, 2001 (Administrative Record Number WV–1217), the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201

*et seq.*). The program amendment consists of changes to the W. Va. Code as amended by Senate Bill 603. The amendment concerns reclamation plan requirements at W. Va. Code 22–3–10, and authorizes the submittal and inclusion of master land use plans for postmining land use in reclamation plans. The submittal also contains revisions to provisions concerning the Office of Coalfield Community Development at W. Va. Code 5B–2A. The amendment is intended to improve the effectiveness of the West Virginia program.

We announced receipt of the proposed amendment in the June 20, 2001, **Federal Register** (66 FR 33032). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment (Administrative Record Number WV–1219). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 20, 2001. We received comments from two Federal agencies.

By letter dated August 12, 2002 (Administrative Record Number WV–1326), the WVDEP sent us additional proposed changes as amended by Senate Bill 698. The submittal consists of changes to the W. Va. Code at section 5B–2A concerning the Office of Coalfield Community Development. The submittal also included an Emergency Rule outlining revisions to State regulations at Code of State Regulations (CSR) 145–8 concerning Community Development Assessment and Real Property Valuation Procedures for Office of Coalfield Community Development.

We announced receipt of the proposed amendment in the November 6, 2002, **Federal Register** (67 FR 67576). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment (Administrative Record Number WV–1343). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 6, 2002. We did not receive any comments.

## III. OSM's Findings

Following are the findings we made pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 concerning the proposed amendments to the West Virginia program. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

*1. W.Va. Code 22–3–10. Reclamation Plan Requirements*

New subsection 22–3–10(b) is added, and existing subsection (b) is relettered as (c). New subsection (b) is added to read as follows:

> (b) Any surface mining permit application filed after the effective date of this subsection may contain, in addition to the requirements of subsection (a) of this section, a master land use plan, prepared in accordance with article two-a, chapter five-b of this code, as to the post-mining land use. A reclamation plan approved but not implemented or pending approval as of the effective date of this section may be amended to provide for a revised reclamation plan consistent with the provisions of this subsection.

We note that the State inadvertently omitted language from a version of the proposed amendment submitted to us on May 21, 2001. Specifically, the phrase ''or pending approval as of the effective date of this section'' was not identified in the State's draft statutory language. Consequently, we did not include the quoted phrase in our proposed rule announcement published in the **Federal Register** on June 20, 2001. The language was, however, identified in Engrossed Committee Substitute for Senate Bill 603 and included in all materials available for public review at OSM's Charleston Field office. The language was also included in all materials we provided Federal agencies for review and comment. We believe that the omission does not change the basic intention of the proposed amendment at W. Va. Code 22–3–10(b) and, therefore would not affect the basis of our decision on the proposed amendment.

In addition, and related to the above amendment, the State amended the CSR at 145–8 by adding, among other changes, section six concerning master land use plans. Subsection CSR 145–8–6.6 provides that an operator may include, in a surface mining permit application, a master land use plan which addresses postmining land uses in the reclamation plan developed pursuant to W. Va. Code 22–3–10. The provision also provides that an operator may amend a reclamation plan approved but not implemented or a reclamation plan pending approval by including a master land use plan.

Subsection CSR 145–8–6.6.a. further provides that any modification in the postmining land use during mining must be made in accordance with CSR 38–2–7.3.a. and 3.28. These sections contain the criteria for approving alternative postmining land uses and the permit revision requirements of the State's approved program. The proposed rule clarifies that any modification in the postmining land use must be done in accordance with the approved State program, even if change is due to the master land use plan.

Subsection CSR 145–8–6.7 provides that master land use plans must be approved by WVDEP as part of the operator's reclamation plan before the master land use plan may be implemented. This provision clarifies the intended relationship of the reclamation plan required by W. Va. Code 22–3–10 and master land use plans, which are authorized by W. Va. Code 22–3–10(b) to be included in the reclamation plans of permit applications. Specifically, CSR 145–8–6.7 provides that a master land use plan must first be approved by WVDEP as part of the operator's proposed reclamation plan. We understand this to mean that in order to be approved as part of the reclamation plan, the master land use plans must be consistent with the reclamation plan requirements at W. Va. Code 22–3–10(a). In addition, CSR 145–8–6.6 clarifies that any modifications in the postmining land use that may occur during mining must be approved in accordance with CSR 38–2–7.3a and 3.28.

We find that the proposed amendment to W. Va. Code 22–3–10(b) does not render the West Virginia program less stringent than SMCRA section 508 concerning reclamation plan requirements. Our finding is based on our understanding that to receive approval by the Secretary of WVDEP as part of a permit application's reclamation plan, master land use plans must be consistent with the reclamation plan requirements at W. Va. Code 22–3–10(a). If, in future reviews, we should determine that the State is applying this provision inconsistent with this finding, a further amendment may be required.

*2. W. Va. Code 5B–2A. Office of Coalfield Community Development*

W. Va. Code 5B–2A has never been approved by OSM and is not currently part of the West Virginia program. W. Va. Code 5B–2A–1(g) clarifies that the purpose of W. Va. Code 5B–2A is to authorize the West Virginia development office to take a more active role in the long-term economic development of communities in which surface coal mining operations are prevalent. W. Va. Code 5B–2A–4 establishes the Office of Coalfield Community Development within the West Virginia development office. W. Va. Code 5B–2A–1(g) also authorizes the West Virginia development office to establish a formal process to assist property owners in the determination of the fair market value where the property

owner and the coal company voluntarily enter into an agreement relating to the purchase and sale of the property. W. Va. Code 5B–2A–2 specifies that the provisions of W. Va. Code 5B–2A are not applicable to either underground coal mining operations (surface operations or the surface impacts of underground mining) or operations that qualify for assistance under the small operator assistance program (SOAP).

We understand that the proposed revisions to W. Va. Code 5B–2A do not supersede any provisions of the approved program and, therefore, we find that the proposed amendments do not need to be approved under the Federal regulations at 30 CFR 732.17(b) as a part of the State program. If, in future reviews, we should determine that the State is applying these provisions inconsistent with this finding, a further amendment may be required.

We note that there are several instances in which cross-references to provisions within the approved West Virginia program appear in W. Va. Code 5B–2A. Although most of these cross-references appear to not affect the implementation or effectiveness of the approved program, it appears that others may. For example, W. Va. Code 5B–2A–6(a)(1) incorporates by reference the notice of violation (NOV) provisions at W. Va. Code 22–3–17. It is not clear whether this cross-reference merely incorporates the provisions at W. Va. Code 22–3–17 for the purposes of W. Va. Code 5B–2A and does not otherwise affect the approved program. However, since this provision was not part of this proposed amendment, but rather is part of existing West Virginia law, we cannot decide its effect on the West Virginia program as a part of this rulemaking. Therefore, at a future date, we will discuss the implications of these cross-references with the WVDEP and the Office of Coalfield Community Development to determine their effect on the approved West Virginia program.

*3. CSR 145–8. Community Development Assessment and Real Property Valuation Procedures for Office of Coalfield Community Development*

The CSR 145–8 has never been approved by OSM and is not currently part of the West Virginia program. We will first decide whether CSR 145–8 affects the implementation or effectiveness of the West Virginia program and, therefore, must be reviewed and approved as a part of the West Virginia program.

The CSR 145–8–1 clarifies the scope of the rules, and provides that CSR 145–8 establishes the procedures for the creation of community impact statements by operators, and the process to develop coalfield community development procedures which include asset development goals and infrastructure needs. The CSR 145–8 also establishes the criteria for the development of a master land use plan by local and county regional development or redevelopment authorities, and the procedure for establishing the value of property to assist property owners who desire to voluntarily sell their property to an operator.

Section CSR 145–8–6 concerns master land use plans. Subsection CSR 145–8–6.6 provides that an operator may include, in a surface mining permit application, a master land use plan that addresses postmining land uses in the reclamation plan developed pursuant to W. Va. Code 22–3–10. The provision also provides that an operator may amend a reclamation plan approved but not implemented or a reclamation plan pending approval by including a master land use plan. Subsection CSR 145–8–6.7 provides that the master land use plan must be approved by the department (WVDEP) as part of the operator's reclamation plan before the master land use plan may be implemented. This provision helps to clarify the intended relationship of master land use plans with the reclamation plan required by W. Va. Code 22–3–10. That is, a master land use plan must first be approved by WVDEP as part of the operator's proposed reclamation plan, before the master land use plan can be implemented. As we discussed above at Finding 1, master land use plans must also be consistent with the reclamation plan requirements at W. Va. Code 22–3–10(a), otherwise the WVDEP could not approve the master land use plan as part of the reclamation plan.

There are several instances in which citations to provisions within the approved West Virginia program appear in these rules. And there are several references to aspects of the approved program, such as to postmining land use, the intended blasting plan, and surface mining operations. However, such citations and references do not affect the implementation or effectiveness of the approved program. For example, CSR 145–8–2.15 provides for a definition of ''surface mining operations'' that applies only to CSR 145–8. Subsection CSR 145–8–2.15 provides that the definition of surface mining operations does not include (at subdivision 2.15.b) coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use. This provision has no effect on the approved program, because it only means that coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use would not be subject to the requirements of CSR 145–8. However, these activities would still be subject to the requirements of the State's Surface Coal Mining and Reclamation Act at W. Va. Code 22–3–1 *et seq.* and its implementing regulations. To help avoid any possible confusion, we note that State rules at CSR 38–2–23 concerning special authorization for coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use have not been approved by OSM and are not, therefore, part of the approved West Virginia program. See the May 5, 2000, **Federal Register** (65 FR 26130), for information concerning our decision not to approve the provisions at CSR 38–2–23.

Nevertheless, we find that none of the proposed provisions of CSR 145–8 supersede or affect the implementation or effectiveness of the West Virginia program and, therefore, do not need to be approved as a part of that program.

## IV. Summary and Disposition of Comments

*Public Comments*

No public comments were received in response to our requests for comments from the public on the proposed amendments.

*Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on July 3, 2001, and October 4, 2002, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Numbers WV–1221 and WV–1337). On May 21, 2001, and October 30, 2002, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA), responded and stated that the amendments have no impact on MSHA's enforcement activities or do not conflict with MSHA's regulations and policies (Administrative Record Numbers WV–1229 and WV–1342).

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33

U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that West Virginia proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the proposed amendment.

Under 30 CFR 732.17(h)(11)(i), on July 3, 2001, and October 4, 2002, we requested comments on the amendments from EPA (Administrative Record Numbers WV–1221 and WV–1337). The EPA responded by letters dated August 20, 2001, and November 1, 2002 (Administrative Record Numbers WV–1242 and WV–1341, respectively). The EPA stated that it has some concerns about the proposed statutory amendment (Senate Bill 603) and provided the following comments. On August 20, 2001, EPA stated that W. Va. Code 5B–2A–9(f)(1) allows the coalfield development authorities to determine post-mining land use needs. These land use needs, EPA stated, are specified as industrial, commercial, agriculture, public facility, and recreational uses. EPA stated that it is apparent that certain land uses, such as commercial and industrial uses, require level land. This may necessitate disposal of excess spoil in valley fills, impacting headwater streams, rather than placement in the mined areas. EPA stated that a particular concern with the amendment is that there are no requirements for specific plans or commitments to develop the post-mining uses. This could result in leveled mountaintops lying idle indefinitely while waiting for an investment in commercial, industrial, or public development, EPA stated. In some instances, EPA stated, excess spoil which could have been placed on the leveled mined areas, may needlessly be placed in valley fills.

In response, and as we noted above in Finding 2, W. Va. Code 5B–2A does not supersede any part of the approved West Virginia program. While W. Va. Code 5B–2A–9(f)(1) does authorize the development of master land use plans that may identify postmining land use needs that include industrial, commercial, agricultural, and public facility uses or recreational facility uses, the approved program provisions continue to apply. For example, W. Va. Code 22–3–13(c) provides an exception for certain mountaintop removal mining operations from the requirements to restore approximate original contour (AOC). These provisions would continue to apply. W. Va. Code 22–3–13(c)(3) identifies the specific postmining land uses that may be approved for mountaintop removal mining operations under W. Va. Code 22–3–13(c). The provisions at W. Va. Code 22–3–13(c)(3), which specify the demonstrations that must be made to qualify for a mountaintop removal mining operations AOC exception, also continue to apply. We believe, however, that the proposed master land use plans and the data they may contain should be very useful to the regulatory authority as it assesses a permit application for compliance with the requirements of W. Va. Code 22–3–13(c).

Upon reviewing subsequent statutory and regulatory revisions pertaining to West Virginia's Office of Coalfield Community Development, EPA stated on November 1, 2002, that there were no apparent inconsistencies with the Clean Water Act or other statutes and regulations under EPA's jurisdiction.

## V. OSM's Decision

Based on the above findings we approve the amendment to W. Va. Code 22–3–10(b) sent to us by West Virginia. We are not rendering a decision on the submitted, amended portions of W. Va. Code 5B–2A and the Emergency Rules at CSR 145–8 because they are outside the scope of SMCRA and do not, therefore, need our approval.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempt from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply,

distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 20, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

## PART 948—WEST VIRGINIA

■ 1. The authority citation for Part 948 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.15 is amended in the table by adding a new entry in chronological order by date of publication of final rule to read as follows:

**948.15 Approval of West Virginia regulatory program amendments.**

* * * * *

| Original amendment submission dates | Date of publication of final rule | Citation/description |
|---|---|---|
| * * * * * * * | | |
| May 21, 2001, August 12, 2002 | May 7, 2003 | W. Va. Code 22–3–10(b). |

[FR Doc. 03–11220 Filed 5–6–03; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[CGD05–03–043]**

**RIN 1625–AA00**

## Safety Zone; Amtrak Railroad Bridge, Susquehanna River, Havre de Grace, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing an emergency safety zone to protect the Amtrak Railroad Bridge on the Susquehanna River. This safety zone is necessary to provide for the safety of life on navigable waters due to damage to the bridge fendering system. This action is intended to restrict vessel traffic in a portion of the Susquehanna River in the vicinity of the Amtrak Railroad Bridge.

**DATES:** This rule is effective from 5 p.m. on April 23, 2003, through 5 p.m. on May 23, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05–03–043 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Dulani Woods, Waterways Management, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, telephone number (410) 576–2513.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the unexpected nature of the weather impacting the railroad bridge and the damage to the bridge fendering system, it is in the public interest to have the safety zone in effect immediately.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the unexpected nature of the weather impacting the railroad bridge and the damage to the bridge fendering system, it is in the public interest to have the safety zone in effect immediately.

**Background and Purpose**

Following a report of two tug-and-barge impacts with the Amtrak Railroad Bridge fendering system, underwater damage was discovered, causing an obstruction and creating a hazard to navigation in the eastern portion of the navigable channel. Due to an increasing presence of recreational boating, the prolonged existence of the hazard to navigation, and until repairs to the fendering system have been made, the Coast Guard will restrict vessel traffic in the area.

**Discussion of Rule**

The Coast Guard is establishing a temporary safety zone on specified waters of the Susquehanna River in Havre de Grace, Maryland. The temporary safety zone will be enforced from 5 p.m. on April 23, 2003, through 5 p.m. on May 23, 2003. The effect will be to restrict general navigation in the regulated area until repairs to the bridge fendering system have been made and removal of the underwater obstruction. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Susquehanna River, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the limited portion of the river that will be regulated. Also, the Captain of the Port will allow smaller vessels that do not pose a significant risk to the bridge or its fendering system to transit the area. Other reasons include extensive notifications that will be made to the maritime community via marine information broadcasts.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in a portion of the Susquehanna River from 5 p.m. April 23, 2003, to 5 p.m. on May 23, 2003.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to the entire width of the river, most vessel operators will be allowed to pass through the zone with the permission of the Captain of the Port.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add temporary § 165.T05–043 to read as follows:

**§ 165.T05–043 Safety Zone; Amtrak Railroad Bridge, Susquehanna River, Havre de Grace, Maryland.**

(a) *Regulated Area.* The waters of the Susquehanna River, 10 yards in all directions from the swing portion of the Amtrak Railroad Bridge (Mile 1.0 on the Susquehanna River.)

(b) *Regulations.* Except for persons or vessels authorized by the Captain of the Port or his designated representative, no person or vessel may enter or remain in the safety zone.

(c) *Effective date.* This section is effective from 5 p.m. on April 23, 2003 through 5 p.m. on May 23, 2003.

Dated: April 23, 2003.

**Evan Q. Kahler,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.*

[FR Doc. 03–11298 Filed 5–6–03; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[COTP San Francisco Bay 03–008]**

**RIN 1625–AA00**

### Safety Zone; San Francisco Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco Bay, California, off the San Francisco waterfront, for the ''KFOG KaBoom'' fireworks display. The safety zone will encompass the navigable waters within a 1,000-foot radius of the launch platform, which will be located approximately 1,000 feet off Piers 30 and 32 in San Francisco, California. This safety zone is necessary to provide for the safety of mariners in the vicinity of the fireworks display and for the safety of the vessel, its crew, and technicians working the fireworks launch barge and the pyrotechnics.

**DATES:** This temporary rule is effective from 7 p.m. to 10 p.m. on May 10, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket [COTP San Francisco Bay 03–008] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Diana J. Cranston, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register.** Because the event's sponsor scheduled this year's event on a date inconsistent with the date listed in Table 1 to 33 CFR 165.1191 (Safety Zones: Northern California annual fireworks events), a temporary final rule became necessary. Due to specific event sponsored logistical coordination issues, the Coast Guard only recently became aware of the date change, and therefore there was insufficient time for the Coast Guard to draft and publish an NPRM, or a temporary final rule 30 days prior to the event. As such, the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to temporarily close the fireworks area and to protect the maritime public from the hazards associated with these fireworks displays, which are intended for public entertainment.

On July 21, 1999, we published a final rule entitled ''Special Local Regulations and Safety Zones; Northern California Annual Marine Events'' in the **Federal Register** (64 FR 39027), after publishing an NPRM on August 31, 1998 (63 FR 46206). The July 21, 1999 final rule, among other things, added a master list of recurring fireworks events to the Code of Federal Regulations in new § 165.1112 of title 33, Code of Federal Regulations. This section was redesignated as § 165.1191 on June 25, 2001 (66 FR 33642). Table 1 to § 165.1191 lists the annual date for ''KFOG KaBoom'' as ''Last Saturday in May.''

This year's event will take place on May 10, 2003. The Coast Guard will work with the event sponsor to determine the date of future KFOG KaBoom events. If necessary, the Coast Guard will publish an NPRM to propose appropriate changes to 33 CFR § 165.1191, so mariners and members of the public can better anticipate future fireworks events in Northern California.

**Background and Purpose**

The KFOG KaBoom is an annual fireworks show, which combines fireworks and music and is presented by KFOG, a San Francisco radio station. This safety zone is necessary to protect the spectators, and vessels and other property from the hazards associated with the fireworks show. This temporary safety zone will consist of a small portion of the navigable waters of the San Francisco Bay along the San Francisco waterfront.

**Discussion of Rule**

The temporary safety zone consists of the navigable waters of San Francisco Bay within a 1,000 foot radius of the launch platform, located approximately 1,000 feet off Piers 30 and 32 in San Francisco, California. Entry into, transit through or anchoring within the safety zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this safety zone will restrict boating traffic, the effect of this regulation will not be significant as the safety zone is will affect only a small portion of the waterway and will be short in duration.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. § 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Any impact to small entities would not be significant since this zone will encompass only a small portion of the waterway for a limited period of time and vessels can safely navigate around the safety zone.

**Assistance For Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From 7 p.m. to 10 p.m. on May 10, 2003, in § 165.1191 temporarily suspend the entry in Table 1 to the section for ''KFOG KaBoom'' and add a new temporary paragraph (c) to read as follows:

**§ 165.1191 Safety Zones: Northern California annual fireworks events.**

* * * * *

*(c) KFOG KaBoom Safety Zone.* The safety zone for KFOG KaBoom in San Francisco consists of the navigable waters within a 1,000-foot radius of the launch platform, which will be located approximately 1,000 feet off Piers 30 and 32 in San Francisco, California. This safety zone will be enforced from 7 p.m. PDT to 10 p.m. PDT on May 10, 2003. In accordance with the general regulations in § 165.23 of this part, entering into, transiting through, or anchoring within this zone is prohibited, unless authorized by the Captain of the Port or the Patrol Commander, or their designated representative.

Dated: April 25, 2003.

**Gerald M. Swanson,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

[FR Doc. 03–11299 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[MD136–3091a; FRL–7483–9]**

## Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to Stage II Vapor Recovery at Gasoline Dispensing Facilities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions allow existing gasoline dispensing facilities to continue using installed vapor recovery equipment and require new gasoline dispensing facilities to be equipped with the most recently approved system. EPA is proposing to approve these revisions in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on July 7, 2003 without further notice, unless EPA receives adverse written comment by June 6, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be addressed to Makeba Morris, Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On May 23, 2002, the Maryland Department of the Environment (MDE) submitted a formal revision (#02–03) to its State Implementation Plan (SIP) revising certain provisions in the State's regulations pertaining to Stage II Vapor Recovery at Gasoline Dispensing Stations. The SIP revision went to public hearing on February 27, 2002 and became effective on March 14, 2002. On April 5, 2002, MDE made corrections to the adopted rule to remove incorrectly placed brackets and an incorrect reference to a test method.

### II. Summary of SIP Revision

The 1990 Clean Air Act Amendments (CAAA) required states to develop regulations requiring owners or operators of certain gasoline dispensing facilities to install systems for recovery of gasoline vapor emissions. This requirement is also known as Stage II Vapor Recovery (Stage II) and is required in areas classified as moderate and above ozone nonattainment. Stage II is the control of gasoline vapors when dispensing gasoline into vehicle fuel tanks. The MDE adopted Stage II regulations on January 18, 1993 which became effective on February 15, 1993. These regulations were submitted to EPA as a SIP revision on January 18, 1993 and approved as a final rule by EPA on June 9, 1994 (54 FR 29730).

Maryland's SIP-approved Stage II regulation requires the use of vapor recovery systems that have been certified or ''approved'' by the California Air Resources Board (CARB). In general, these systems are 95 percent efficient. However, CARB has decided to de-certify the existing approved systems in favor of those able to achieve an efficiency of 98 percent. This means that in California, all existing CARB-approved systems will be de-certified and will be required, within a specified time frame, to be re-certified using systems that meet, among other things, the new efficiency requirements. MDE is continuing to evaluate the CARB system changes. In the meantime, MDE will require existing gasoline dispensing facilities to continue to use the installed equipment and require new gasoline dispensing facilities to be equipped with a system that was approved by CARB prior to April 1, 2001.

The changes proposed by this SIP revision to MDE's Stage II regulations are to:

(A) Redefine the term ''approved Stage II Vapor Recovery System'' as a system approved by CARB before April 1, 2001 or a system approved by the department. This change will require existing and new gas station operators to use systems that were previously approved by CARB.

(B) Identify ''vapor assist system I'' as the conventional vapor assist system and a ''vapor assist system II'' as the ''Healy'' system that requires different tests.

(C) Clarify the requirements for continued use of an existing Stage II system regardless of ownership unless the monthly throughput drops below 10,000 gallons.

(D) Clarify the requirements when a person purchases a facility that is not equipped with an approved system.

(E) Allow approved systems to be used after April 1, 2001 (the date when CARB-approved systems are de-certified) for both existing and new gasoline dispensing facilities.

(F) Require the use of a pressure/vacuum valve on gasoline tanks.

(G) Require owners to maintain inspection and testing reports on site and to notify the MDE of tests to be performed.

(H) Incorporate by reference the CARB-approved test methods.

EPA has reviewed these changes and has determined that the revisions continue to meet the CAAA requirements for states to have an

approved Stage II Vapor Recovery System. In addition, the revisions, in general, strengthen the SIP by providing additional clarification of certain provisions, requiring that records be maintained onsite and by incorporating by reference appropriate test methods for vapor recovery systems.

**III. Final Action**

EPA is approving the revisions to MDE's Stage II regulations submitted to EPA on May 23, 2002. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 7, 2003 without further notice unless EPA receives adverse comment by June 6, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**IV. Statutory and Executive Order Reviews**

*A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 7, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve revisions to MDE's Stage II Vapor Recovery program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 9, 2003.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart V—Maryland**

■ 2. Section 52.1070 is amended by adding paragraphs (c)(178) to read as follows:

**§ 52.1070 Identification of plan.**

* * * * *

(c) * * *

(178) Revisions to the Maryland State Implementation Plan for Stage II Vapor Recovery at Gasoline Dispensing Facilities submitted on May 23, 2002 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of May 23, 2002 from the Maryland Department of the Environment transmitting revisions to the Maryland State Implementation Plan pertaining to Stage II Vapor Recovery at Gasoline Dispensing Facilities.

(B) The following revisions and additions to COMAR 26.11.24, effective on April 15, 2002:

(*1*) Revisions to .01B(1) and (17); addition of .01B(18) and .01B(19).

(*2*) Addition of .01–1.

(*3*) Revisions to .02C(1) and (3); addition of .02D, .02E and .02F.

(*4*) Revisions to .03F; addition of .03H and .03I.

(*5*) Revisions to .04A (introductory paragraph), .04B, .04C and .04C(1); addition of .04A(1) through .04A(5) and .04C(2).

(*6*) Revisions to .07A, .07B and .07D; addition of .07E.

(ii) Additional Material.—Remainder of the State submittal(s) pertaining to the revisions listed in paragraph (c)(178)(i) of this section.

[FR Doc. 03–11183 Filed 5–6–03; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[PA188–4205a; FRL–7482–7]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and $NO_X$ RACT Determinations for Two Individual Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for two major sources of volatile organic compounds (VOC) and nitrogen oxides ($NO_X$) located in Pennsylvania. The two major sources are Dominion Trans Inc. in Clinton County, and Textron Inc. in Lycoming County. EPA is approving these revisions to establish VOC and $NO_X$ RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

**DATES:** This rule is effective on July 7, 2003 without further notice, unless EPA receives adverse written comment by June 6, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to Makeba Morris, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and $NO_X$ sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

### II. Summary of SIP Revision

On October 30, 2002, PADEP submitted formal revisions to its SIP to establish and impose case-by-case RACT for three major sources of VOC and $NO_X$. This rulemaking pertains to two of those sources. The other source is subject to a separate rulemaking action. The RACT determinations and requirements are included in operating permits (OP) issued by PADEP.

The following identifies the individual operating permit that EPA is approving for each source.

*A. Textron Lycoming*

Textron Inc., owns and operates the Textron Lycoming Reciprocating Engine Division (TLRED) facility in Williamsport, Lycoming County, Pennsylvania. Aircraft engines and engine parts are manufactured at the facility, which is considered a major source of VOC. In this instance, RACT has been established and imposed by PADEP in an operating permit. On October 30, 2002, PADEP submitted operating permit No. OP 41–00005 to EPA as a SIP revision. The operating permit lists the following sources:

(1) The permit contains VOC emission limit of 3.040 tons per year (tpy) for the combustion source group. The combustion source group includes: 7 firetube boilers, 5 air make-up units, 140 Cercor heaters, 42 Dravos air heaters, 2 heat treat furnaces, and 4 aqueous washer burners (Source IDs: 032, 033, 034, 035, 036, 037, respectively). RACT for Source IDs 032, 033, 034, 035, 036, and 037 are the installation, maintenance and operation of the source in accordance to the manufacturers specifications. The operating permit contains the description of each source:

(a) Source ID 32 includes seven natural gas fired Firetube Boilers rated at 6.28 MMBTU/hr each;

(b) Source ID 033 includes five natural gas fired Air Make-Up Units with one rated at 3.89 MMBTU/hr, three rated at 5.20 MMBTU/hr each, and another one rated at 6.54 MMBTU/hr;

(c) Source ID034 includes 140 natural gas Cercor Heaters with 111 rated at 0.05 MMBTU/hr each, and 29 rated at 0.10 MMBTU/hr; (d) Source ID 035 includes 42 natural gas fired Dravos Air Heaters rated from 0.10 to 2.38 MMBTU/hr each. An air heater which has been taken out of service must comply with all applicable requirements of 25 Pa. Code section 127.11a in order to be reactivated; (e) Source ID 036 includes two natural gas fired heat treat furnaces using methanol for carburization, rated at 0.7 MMBTU/hr each; and (f) Source ID 037 includes four natural gas fired aqueous washer burners rated at 0.24 MMBTU/hr associated with a washer; 0.36 MMBTU/hr associated with a washer; 0.36 MMBTU/hr associated with a belt washer; and 0.36 MMBTU/hr associated with a spray washer.

(2) Source ID P202 includes 5 large Cooper Tanks with surface area of more than 10 square feet and Source ID P203 includes 6 Cooper Tanks with surface area less than 10 square feet. The permit contains a total combined VOC emission limits of 36.54 tpy from Source IDs P202 and P203 in any 12 consecutive month period. The tanks range in size from 85 to 470 gallons. Each tank contains solvent for the cold degreasing of metal parts. A Cooper Tank, which has been taken out of service, must comply with all applicable requirements of 25 Pa. Code section 127.11a in order to be reactivated.

(3) Source ID P204 includes 76 dip tanks. The permit contains a total combined VOC emission of 4.8 tpy from

Source ID P204 in any 12 consecutive month period. The tanks range in size from 5 to 50 gallons. Each tank contains solvent for the cold degreasing of metal parts. A dip tank which has been taken out of service must comply with all applicable requirements of 25 Pa. Code section 127.11a in order to be reactivated.

(4) Source ID P205 includes 26 corrosion protection tanks. The permit contains a total combined VOC emission limit of 2.76 tpy from Source ID P205 in any 12 consecutive month period. The tanks range in size from 16 to 158 gallons. Each tank contains mineral spirits and ferrocote for preserving of metal parts between machining operations to prevent flash rusting. The facility shall maintain records of the total amount of mineral spirits (''Varsol''), or any other VOC used each month in Source ID P205. The facility shall keep records of the actual mineral spirits usage which occurred for each individual month in Source ID P205. The facility shall also keep records of the supporting calculations used to verify compliance with the annual VOC emission limits for Source ID P205. The facility shall retain records for at least 5 years and shall be made available to PADEP upon request. A corrosion protection tank which has been taken out of service, must comply with all applicable requirements of 25 Pa. Code section 127.11a in order to be reactivated.

(5) Source ID P206 includes 23 spray booth degreasers. The permit contains a total combined VOC emission limit of 24.69 tpy from Source ID P206 in any 12 consecutive month period. Cleaning of parts in the spray booths are done by using Varsol pumped through a handheld nozzle and directed at the part. A spray booth degreaser, which has been taken out of service, must comply with all applicable requirements of 25 Pa. Code section 127.11a in order to be reactivated.

(6) Source ID P210 includes 11 inspection stations containing a mixture of iron and iron oxide particles suspended in a low-volatility mineral spirit based solution. This solution is used to inspect equipment for cracks and inclusions. The permit contains total VOC emission limits of three pounds per hour, 15 pounds per day, or 2.7 tons per 12 consecutive month period for all 11 inspection stations combined. An inspection station, which has been taken out of service, must comply with all applicable requirements of 25 Pa. Code section 127.11a in order to be reactivated.

(7) Source ID P230 includes maintenance welding, general maintenance activities, truck maintenance activities (including spray booth SB27), floor and general cleaning activities, insect control activities, and health service activities. The permit contains total VOC emission limits of three pounds per hour, 15 pounds per day, or 2.7 tons per 12 consecutive month period for all the maintenance activities combined.

(8) Source ID P233 is a fluorescent dye penetrant booth. The permit contains a potential to emit VOC emission limit of three pounds per day, 15 pounds per day, or 2.7 tons in any 12 consecutive month period. A detailed RACT analysis that meets the criteria specified in 25 Pa. Code section 129.92 is required and must be submitted to PADEP if these limits are exceeded. The facility shall keep the following records for Source ID P233: (a) The amount of each VOC containing material used each month, and (b) supporting calculations used to verify compliance with the 12 consecutive month emission limitation for VOCs. All such records shall be retained for a minimum of five years and be provided to PADEP upon request.

(9) Source ID P250 includes three valve check stations that are used to check engine head assemblies for proper seating. These check stations do not use VOC-containing materials. The facility shall keep records, identifying liquid materials used in Source ID P250 and information that verifies that these materials does not contain any VOCs. All such records shall be retained for a minimum of five years and be provided to PADEP upon request.

*B. Dominion Trans Inc.*

Dominion Trans Inc., is a natural gas transmission facility located in Clinton County, Pennsylvania. The facility, which uses equipment to transport and store natural gas is located at the Finnefrock Station and is considered a major source of VOC and $NO_X$. In this instance, RACT has been established and imposed by PADEP in an operating permit for Engine No. 4 identified as Source ID P104. Source IP P104 is a natural gas fired internal combustion engine rated at 4000 horsepower that is used to compress the natural gas in order to send it along the pipeline in its destination. On October 30, 2002, PADEP submitted operating permit No. OP 18–00005 to EPA as a SIP revision. The permit contains $NO_X$ emission limit of 44.1 pounds per hour and 193.16 tons in any 12 consecutive month period, and VOC emission limit of 2.43 pounds per hour and 10.64 tons in any 12 consecutive month period. The facility shall only use quality natural gas as fuel for Source ID P104. The facility shall perform semi-annual $NO_X$ testing using a portable exhaust gas analyzer approved by PADEP. This testing shall be performed during the periods of March 1 through May 31 and September 1 through November 30. The reference method testing required maybe substituted for the portable analyzer testing on a one-on-one basis (one occurrence of reference method testing may be substituted for one of every six months occurrences of the portable analyzer testing). The facility shall submit the results of all portable exhaust gas analyzer testing to PADEP no later than 30 days after the completion of the testing. The facility is required to perform EPA reference method stack testing on Source ID P104 sometime during the interval beginning on January 1, 2003 and ending on December 31, 2004 for $NO_X$ and VOC. All testing is performed while the source is operating at full load and full speed. The facility shall maintain records in accordance with the recordkeeping requirements of 25 Pa. Code section 129.95 that shall include a minimum of the following: (1) The total number of hours that Source ID P104 is operated each month, and (2) the amount of fuel used in Source ID P104 each month. These records shall be retained for a minimum of five years and be provided to PADEP upon request.

**III. EPA's Evaluation of the SIP Revisions**

EPA is approving these SIP submittals because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

**IV. Final Action**

EPA is approving a revision to the Commonwealth of Pennsylvania's SIP which establishes and requires RACT for Textron Inc., Lycoming County, and Dominion Trans Inc., Clinton County. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 7, 2003 without further

notice unless EPA receives adverse comment by June 6, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## V. Statutory and Executive Order Reviews

### *A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for two named sources.

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 7, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Pennsylvania's source-specific RACT requirements to control VOC and $NO_X$ emissions from two individual sources may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 4, 2003.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(202) to read as follows:

### § 52.2020 Identification of plan.

* * * * *

(c) * * *

(202) Revisions pertaining to VOC and $NO_X$ RACT determinations for major sources submitted by the Pennsylvania Department of Environmental Protection on October 30, 2002.

(i) Incorporation by reference.

(A) Letter of October 30, 2002 from the Pennsylvania Department of Environmental Protection transmitting source-specific $NO_X$ RACT determinations.

(B) Operating Permits (OP):

(*1*) Dominion Trans Inc., Clinton County, Title V Permit No.: 18–00005, effective February 16, 2000.

(*2*) Textron Lycoming, Lycoming County, Title V Permit No.: 41–00005, effective January 12, 2001.

(ii) Additional Material.

(A) A letter of February 11, 2003 from the Pennsylvania Department of Environmental Protection to EPA transmitting materials related to the RACT permits listed in paragraph (c)(202)(i) of this section.

(B) Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the source listed in paragraph (c)(202)(i)(B) of this section.

[FR Doc. 03–11181 Filed 5–6–03; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

**[CA–276–0380; FRL–7461–5]**

## Approval and Promulgation of Implementation Plans and Designation of Areas; California—Indian Wells Valley PM–10 Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval pursuant to the Clean Air Act (CAA or the Act) of the moderate area plan and maintenance plan for the Indian Wells Valley planning area in California and redesignating the area from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10).

**EFFECTIVE DATE:** This rule is effective on June 6, 2003.

**ADDRESSES:** You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301.

California Air Resources Board, 1001 I Street, Sacramento, CA 95814.

**FOR FURTHER INFORMATION CONTACT:** Karen Irwin, Air Planning Office (AIR–2), EPA Region 9, at (415) 947–4116 or: *irwin.karen@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 17, 2002 we proposed to approve the PM–10 moderate area nonattainment plan and maintenance plan and the redesignation request for the Indian Wells Valley planning area (Indian Wells plan) submitted to EPA by the California Air Resources Board (ARB) on December 5, 2002.[1] 67 FR 77196. In the proposal, we discussed in detail the CAA provisions for PM–10 moderate area plans, including EPA's clean data approach to areas such as the Indian Wells Valley, and the Act's requirements for maintenance plans and redesignation to attainment. In the proposal, we also evaluated the moderate area plan and maintenance plan and redesignation request according to the CAA and applicable EPA guidance. The reader is advised to refer to the proposal for these detailed discussions as they are not repeated here. In short, EPA, among other findings, determined that:

(1) The Indian Wells Valley PM–10 nonattainment area has attained the PM–10 NAAQS based on three years of quality assured monitoring data;

(2) The emissions inventory in the plan is current, accurate and complete per CAA section 172(c)(3);

(3) Control measures that can be attributed as responsible for bringing the area into attainment meet the Reasonably Available Control Measures (RACM) requirement per CAA section 189(a)(1)(C);

(4) The air quality improvement in the area is due to permanent and enforceable measures;

(5) The plan adequately demonstrates future maintenance of the NAAQS for at least ten years into the future;

(6) The motor vehicle emission budgets contained in the plan meet the purposes of CAA section 176(c)(1) and the transportation conformity rule at 40 CFR part 93, subpart A; and

(7) The area's maintenance demonstration does not rely on nonattainment New Source Review (NSR) and, therefore, the area need not have a fully approved nonattainment NSR program prior to approval of the redesignation request.

EPA did not receive any public comments on the proposed rule.

### II. Summary of Action

With this final action, we are incorporating the moderate area plan and maintenance plan and redesignation request for the Indian Wells Valley Planning area, September 5, 2002, into the California State Implementation Plan (SIP). We are also approving the following measures, city ordinances, and commitments into the California SIP:

1. Fugitive Dust Control Plan for the Naval Air Weapons Station, China Lake, California (September 1, 1994).[2] This plan establishes controls for unpaved roads, disturbed vacant land and open storage piles.

2. Kern County 1990 Land Use Ordinance—Chapter 18.55 and Kern County Development Standards, Chapter III. This ordinance requires paving of streets for new subdivisions according to the County Development Standards.[3]

3. City of Ridgecrest Municipal Code 1980 which requires paving of streets for new subdivisions.[4]

4. ARB Executive Order G–125–295 which contains a commitment for future PM–10 air quality monitoring in the Indian Wells Valley planning area.

We are also approving the following rules as RACM with respect to control of process fugitive emissions, however, as indicated by the following dates, they are already included in the California SIP: Rule 401 ''Visible Emissions,'' November 29, 1993; Rule 404.1 ''Particulate Matter Concentration, April 18, 1972; and Rule 405 ''Particulate Matter Emission Rate,'' July 18, 1983. In addition, we are approving as RACM in the Indian Wells area the paving of unpaved roads between 1993 and the present[5] and Bureau of Land Management closure of 83 miles of unpaved roads/off-highway vehicle trails, between 1994 and the present.[6]

With this final action, the Indian Wells Valley PM–10 nonattainment area is redesignated to attainment for the 24-hour and annual PM–10 NAAQS. The CAA requirements of the NSR program are replaced by the Prevention of Significant Deterioration program pursuant to 40 CFR 52.21, per the delegation agreement between EPA and Kern County Air Pollution Control District dated August 12, 1999.

### III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this final action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). It merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law.

Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a

[1] We had previously received a draft of the plan for review.

[2] Appendix D of the Indian Wells plan.

[3] Appendix E of the Indian Wells plan.

[4] Ibid.

[5] Appendix D of the Indian Wells plan.

[6] Appendix E of the Indian Wells plan.

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This final rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This final action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This final rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 7, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Environmental protection, Air pollution control.

Dated: February 24, 2003.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart D—California

■ 2. Section 52.220 is amended by adding paragraph (c)(306) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(306) The following plan was submitted on December 5, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Kern County Air Pollution Control District.

*(1)* PM–10 (Respirable Dust) Attainment Demonstration, Maintenance Plan, and Redesignation Request (excluding pages 4–1, 4–2, 6–1, 6–2, Appendix A, and pages D–12 through D–37 of Appendix D) adopted on September 5, 2002.

(B) California Air Resources Board, California.

*(1)* California Air Resources Board Executive Order G–125–295 adopted on December 4, 2002.

* * * * *

## PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 2. In § 81.305 the PM–10 table is amended by revising the entry for the Indian Wells Valley planning area under ''Fresno, Kern, Kings, Tulare, San Joaquin, Stanislaus, Madera Counties'' to read as follows:

**§ 81.305 California.**

* * * * *

CALIFORNIA—PM–10

| Designated area | Designation | Date [1] | | Classification | |
|---|---|---|---|---|---|
| | | Type | | Date [1] | Type |
| * * * | * | * | | * | * |
| Fresno, Kern, Kings, Tulare, San Joaquin, Stanislaus, Madera Counties: | | | | | |
| Indian Wells Valley planning area ..... That portion of Kern County contained within Hydrologic Unit #18090205. | 09/5/02 | Nonattainment ..... | | July 7, 2003 | Attainment. |
| * * * | * | * | | * | * |

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 03–7640 Filed 5–6–03; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[OPP–2003–0140; FRL–7302–7]**

## Pesticide Tolerance Processing Fees; Annual Adjustment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). As specified in 40 CFR 180.33(o), the existing fee schedule is changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. Accordingly, the revisions in this rule reflect a 4.27% increase in locality pay for civilian Federal GS employees working in the Washington, DC and Baltimore, MD metropolitan area in 2003.

**DATES:** This rule is effective June 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** *For general information concerning this rule contact*: Ed Setren, Resources Management Staff (7501C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (703) 305–5927; fax: (703) 305–5060; e-mail address: *setren.edward@epa.gov*.

*For technical information concerning tolerance petitions and individual fees contact*: Sonya Brooks, Resources Management Staff (7501C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (703) 308–6423; fax: (703) 305–5060; e-mail address: *brooks.sonya@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Does this Rule Apply to Me?

This rule may directly affect any person who might petition the Agency for new tolerances, hold a pesticide registration with existing tolerances, or anyone who is interested in obtaining or retaining a tolerance in the absence of a registration. This group can include pesticide manufacturers or formulators, companies that manufacture chemicals used in formulating pesticides, importers of food, grower groups, or any person who seeks a tolerance. The vast majority of potentially affected categories and entities may include, but are not limited to:

- Chemical industry (NAICS codes 115112 and 325320) e.g., pesticide chemical manufacturers, formulators, chemical manufacturers of inert ingredients

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed above could also be regulated. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### II. How Can I Get Additional Information or Copies of this Document or Other Documents?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0140. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr[180]_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

### III. What Action is the Agency Taking in this Rule?

With this rule, the Agency is increasing the fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The pay raise in 2003 for Federal General Schedule (GS) employees working in the Washington, DC/Baltimore, MD metropolitan pay area is 4.27%. This increase in the fees charged for processing tolerance petitions reflects these recent pay raises.

### IV. Why is the Agency Taking this Action?

EPA is charged with the administration of section 408 of FFDCA. Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Section 408(o) requires the Agency to collect fees that will, in the aggregate, be sufficient to cover the costs of processing petitions for pesticide products. EPA is publishing this action pursuant to 40 CFR 180.33(o).

The current fee schedule for tolerance petitions published in the **Federal Register** of March 13, 2002 (67 FR 11248) (FRL–6774–3), codified at 40 CFR 180.33, and became effective on April 12, 2002. At that time the fees were increased by 4.94%, 3.81%, and 4.77% to reflect the 2000, 2001, and 2002 pay adjustments in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries (40 CFR 180.33(o)).

The Federal Employees Pay Comparability Act of 1990 (FEPCA) initiated locality-based comparability pay, known as ''locality pay.'' The intent of the legislation is to make Federal pay more responsive to local labor market conditions by adjusting General Schedule salaries on the basis of a comparison with non-Federal rates on a geographic, locality basis. The processing and review of tolerance petitions is conducted by EPA employees working in the Washington, DC/Baltimore, MD pay area.

The pay raise in 2003 for Federal General Schedule employees working in the Washington, DC/Baltimore, MD metropolitan pay area is 4.27%; therefore, the tolerance petition fees are being increased by 4.27%. The entire revised fee schedule is presented in § 180.33 of the regulatory text for the

reader's convenience. (All fees have been rounded to the nearest $25.00.)

**V. Why is EPA Issuing this Action as a Final Rule?**

EPA is publishing this action as a final rule pursuant to 40 CFR 180.33(o), which reads in part:

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale [. . .]. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the rule.

**VI. Statutory and Executive Order Reviews**

This final rule amends the fees charged for processing tolerance petitions under FFDCA to reflect automatic adjustments based on the GS pay scale and is issued as a final rule pursuant to 40 CFR 180.33(o). Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB), nor is this final rule subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since the Agency is authorized to make automatic adjustments based on the GS pay scale by issuing a final rule under 40 CFR 180.33(o), and is not required to issue a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this final rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

**VII. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 25, 2003.

**Susan B. Hazen,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

■ 2. Section 180.33 is revised to read as follows:

**§ 180.33 Fees.**

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of $80,950, plus $2,025 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $18,500 plus $1,225 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $14,925.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $32,325 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $4,600.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $16,075, plus $1,225 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $10,125. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $2,025 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $2,025 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $4,050.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $40,400 to cover the costs of the advisory committee. Further advance deposits of $40,400 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408(d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Interregional Research Project Number 4 (IR-4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (7505C), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A fee of $2,025 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled ''Tolerance Petition Fees'' and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (7505C), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 03–11195 Filed 5–6–03; 8:45 am]

BILLING CODE 6560–50–S

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 511, 516, 532, 538, 546, and 552

**[GSAR Amendment 2003–01; GSAR Case No. 2002–G505]**

**RIN 9000–AH76**

### General Services Administration Acquisition Regulation; Federal Supply Schedule Contracts—Acquisition of Information Technology by State and Local Governments Through Federal Supply Schedules

**AGENCIES:** Office of Acquisition Policy, General Services Administration (GSA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to implement section 211 of the E-Government Act of 2002. Section 211 authorizes the Administrator of GSA to provide for the use by States or local governments of its Federal Supply Schedules for automated data processing equipment (including

firmware), software, supplies, support equipment, and services.

**DATES:** *Effective Date:* May 7, 2003.

*Applicability Date:* This amendment applies to solicitations and existing contracts for Schedule 70, Information Technology (IT), and the Corporate Schedule, containing Information Technology (IT) Special Item Numbers SINs, as defined in GSAM 538.7001, Definitions, Schedule 70. Further, this amendment applies to contracts awarded after the effective date of this rule for Schedule 70 and Corporate Schedule contracts containing IT SINs. Existing Schedule 70 contracts and Corporate Schedule contracts containing IT SINs, shall be modified by mutual agreement of both parties.

*Comment Date:* Interested parties should submit comments to the Regulatory Secretariat at the address shown below on or before July 7, 2003 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to— General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to—*gsarcase.2002–505@gsa.gov*. Please submit comments only and cite GSAR case 2002–G505, in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite GSAR case 2002–G505. The TTY Federal Relay Number for further information is 1–800–877–8973.

**SUPPLEMENTARY INFORMATION:**

## A. Background

This interim rule amends GSAM Parts 511, 516, 532, 538 and 552 to implement Section 211 of the E-Government Act of 2002. Section 211 of the E-Government Act of 2002 (Pub. L. 107–347) amended the Federal Property and Administrative Services Act to allow for ''cooperative purchasing,'' where the Administrator of GSA provides States and localities access to certain items offered through GSA's supply schedules. Section 211 amends 40 U.S.C. 502 by adding a new subsection ''(c)'' that allows, to the extent authorized by the Administrator, a State or local government to use Federal Supply Schedules of the General Services Administration to purchase automated data processing equipment (ADPE) (including firmware), software, supplies, support equipment, and services. ''State or local government'' includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education). Eligible ordering activities (as defined in 552.238–78(b), Scope of Contract (Eligible Ordering Activities)) are encouraged, but not required, to use the ordering procedures outlined in Federal Acquisition Regulation Subpart 8.4 (48 CFR Chapter 1, Subpart 8.4).

GSA published a proposed rule in the **Federal Register** at 68 FR 3220, January 23, 2003. GSA concluded that the proposed rule should be converted to an interim rule, with substantive changes. The interim rule modifies the proposed rule to—

- Incorporate schedule 70 information technology (IT) special item numbers (SINs) that are included in IT ''corporate'' schedule contracts;
- Delete the language regarding dealer sales and their impact on the price reduction clause from the clause at 552.232–83, Contractor's Billing Responsibilities;
- Permit authorized state and local governments to add terms and conditions as part of the statement of work (SOW) or statement of objectives (SOO) required by the state or local government statutes, ordinances, regulations or orders to the extent that they do not conflict with the schedule contract terms and conditions; and
- Revise the disputes language in the clause at 552.238–79, Use of Federal Supply Schedule Contracts by Entities—Cooperative Purchasing, to encourage the use of Alternative Dispute Resolution to the extent authorized by law.

### *B. Summary and Discussion of Significant Comments*

Twenty-four respondents submitted public comments during the comment period. These comments were considered in the formulation of the interim rule and their disposition is summarized as follows:

#### *1. Scope of Rule*

a. Several respondents addressed whether Information Technology (IT) available on the GSA corporate schedule will be available for State or local use.

*Response:* Yes. However, only the Corporate Schedule contracts containing IT Special Item Numbers (SINs), will be available for State or local use.

b. One respondent objected to the inclusion of Architect and Engineering services in the schedules program as violating both the Brooks Architect and Engineering Act and most state statutes.

*Response:* Neither the proposed rule, nor the interim rule, add Architect and Engineering services to the schedules program. Neither the Brooks Architect and Engineering Act, nor the state statutes identified in the respondent's comments, apply to the information technology hardware, software or services provided by Schedule 70 or the information technology corporate Schedule contracts containing IT SINs.

c. Several contractors responding to the rule expressed interest in participating in this program; however, the products and services they offer do not fall within the scope of the products and services offered under Schedule 70 or the Corporate Schedule, containing IT SINs, or they have IT services on another Federal Supply Schedule in support of other Federal supply classes not covered by this rule.

*Response:* Cooperative purchasing may only be conducted pursuant to statutory authorization. Section 211 of the e-Government Act of 2002 authorizes GSA to provide State and local government entities access to information technology products, services, and support equipment. Section 211 does not grant authority to GSA to broaden the scope of this rule to include products and services other than those specifically authorized by that Section. However, to the extent any business offers a product or service that falls within the scope of the rule, that entity may seek to sell their product or service to the Federal Government, states, and localities, by negotiating a schedule contract under Schedule 70 or the Corporate Schedule, containing IT SINs.

d. One respondent expressed concern with allowing dealers to sell to State and local governments.

*Response:* Disagree. State and local government entities should be able to access the same distribution network for goods and services as all other authorized users of the GSA Schedules.

e. One respondent raised concerns about extending cooperative purchasing to commodities other than IT.

*Response:* The statute and this regulation limit application of cooperative purchasing to IT products, services, and support equipment.

#### *2. Ordering*

a. One respondent inquired as to whether State and local entities will be allowed to: place orders through existing BPAs; establish BPAs; and place orders against future BPAs.

*Response:* State and local entities will not be allowed to place orders through

BPAs established prior to this rule unless the State or local entity was previously identified as a user of the BPA consistent with law. However, State and local entities will be allowed to establish their own BPAs upon issuance of an effective rule.

b. Several respondents addressed issues involving e-Commerce.

*Response:* These comments are outside the scope of the proposed rule. However, GSA may conduct a business case analysis to evaluate the feasibility of allowing non-federal eligible ordering activities to use GSA Advantage! or any other e-commerce.

c. Several respondents objected to the language, which prohibits eligible ordering activities from adding additional terms and conditions.

*Response:* This restrictive language has been removed. Eligible ordering activities may add terms and conditions required by statutes, ordinances, regulations, or orders, to the extent that they do not conflict with the schedule contract terms and conditions.

d. Several respondents raised concerns regarding the language added to the clause at 552.232–83, Contractor's Billing Responsibilities, concerning dealer sales. They asserted that the language appears to conflict with the language in paragraph (d)(3) of the clause at 552.238–75, concerning eligible ordering activities.

*Response:* The language in the clause at 552.232–83, Contractor's Billing Responsibilities, was removed.

e. Several respondents objected to limiting acceptance or decline of orders to five days because their contracts allow longer time periods to decline order.

*Response:* To the extent that the language of individually negotiated contracts allows for a longer response time, that contract language prevails.

f. Several respondents objected to allowing the vendors to decline orders placed by State and local entities.

*Response:* The e-Government Act makes clear that vendor participation is voluntary. Section 211 of the Act states in paragraph (c)(2), ''Voluntary Use—In any case of the use by a State or local government of a Federal supply schedule pursuant to paragraph (1), participation by a firm that sells to the Federal Government through the supply schedule shall be voluntary with respect to a sale to the State or local government through such supply schedule.'' (Emphasis added.)

g. One respondent raised a concern whether various states implementing the model procurement code will be able to use the GSA schedules under this proposed rule.

*Response:* This issue is outside the scope of the proposed rule. States and localities will need to make their own legal determinations as to whether use of the schedules is consistent with their laws, regulations, and other policies.

h. One respondent questioned whether the FAR ordering procedures must be used by non-federal eligible ordering activities.

*Response:* The preamble now contains language, which encourages the use of Federal Acquisition Regulation Subpart 8.4 (48 CFR Chapter 1, Subpart 8.4), but does not require its use.

*3. Fees*

a. Several respondents asked for further clarity on when a particular sale should be recorded as a schedule sale for purposes of calculating the industrial funding fee.

*Response:* The proposed rule does not address this topic and any clarification of this issue would be subject to its own rulemaking.

b. Various respondents suggested that the Industrial Funding Fee be waived for cooperative purchasing sales or remitted to the States.

*Response:* GSA instituted the Industrial Funding Fee as a means of cost recovery at the direction of Congress. GSA does not intend to waive this feature of its program.

*4. Dispute Resolution*

a. Several respondents suggested that dispute resolution for State and local government entities be performed by the GSA Board of Contract Appeals (GSBCA).

*Response:* Under the proposed rule as well as this interim rule, orders placed by eligible ordering activities create new contracts to which the Federal Government is not a party. The jurisdiction of the GSBCA depends upon the Contract Disputes Act of 1978 and is limited to review of contract disputes where the Federal Government awards the contract. To implement the change proposed by the commenter would require a change to the Contract Disputes Act.

b. Several respondents addressed the desirability of allowing contract disputes to be resolved through arbitration or other forms of alternative dispute resolution.

*Response:* The interim rule addresses this issue. Paragraph (a)(1) of the clause at 552.238–79, Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing, encourages the use of alternative dispute resolution to the extent authorized by law.

*5. Other Issues*

a. One respondent opposed Most Favored Customer pricing clauses.

*Response:* This issue is beyond the scope of this rule, which focuses on making certain schedule contracts available for cooperative purchasing. The proposed rule does not change existing GSA Multiple Award Schedule pricing policies.

b. One respondent suggested that State and local entities be able to contribute past performance history for Schedule 70 contractors.

*Response:* To the extent that past performance information is voluntarily submitted to the GSA contracting officer by State and local government entities as a result of cooperative purchasing, the GSA shall give the information due consideration in future negotiations regarding the contractor's continued participation in the schedules program and selling to States and localities.

c. One respondent addressed the concern regarding the origin of products from non-qualified sources.

*Response:* This issue is outside the scope of this rule. Existing statutes and regulations address this concern already.

d. One respondent asked GSA to commit to establishing a program for awarding schedule contracts to small businesses specializing in doing business with State and local governments.

*Response:* This issue is outside the scope of the rule. GSA has existing programs to encourage small businesses to seek schedule contracts.

e. One respondent asked how FSS will be able to monitor and assess the effect of cooperative purchasing.

*Response:* To evaluate the effect of cooperative purchasing, GSA intends to monitor changes in access for federal customers and the impact on GSA's ability to negotiate favorable pricing and terms and conditions. GSA will also monitor participation by small businesses.

f. One respondent suggested that contractors be allowed to modify their contracts if they no longer wished to accept orders from State and local government under its Schedule contract.

*Response:* The statute requires that participation be voluntary on the part of the contractors. Contractors wishing to be removed from participation in cooperative purchasing, after electing to participate, should submit a contract modification request to their GSA contracting officer.

**C. List of Information Technology Special Item Numbers**

State and local governments are authorized to procure IT products and services from Schedule 70, Information Technology and the Corporate Schedule contracts containing the IT SINs listed below. The listing of SINs is also available at *http://fss.gsa.gov/elibrary.* Click on Schedules e-Library. A logo will identify all the participating contractors and special items numbers available for purchase by eligible non-federal ordering activities.

*Schedule 70 Special Item Numbers*

SPECIAL ITEM NO. 132–3 LEASING OF PRODUCT (FPDS Code W070)
SPECIAL ITEM NO. 132–4 DAILY / SHORT TERM RENTAL (FPDS Code W070)
SPECIAL ITEM NO. 132–8 PURCHASE OF EQUIPMENT

FSC Class 7010—System Configuration

End User Computers/Desktop Computers
Professional Workstations
Servers
Laptop/Portable/Notebook Computers
Large Scale Computers
Optical and Imaging Systems
Other System Configuration Equipment Not Elsewhere Classified

FSC Class 7025—Input/Output and Storage Devices

Printers
Displays
Graphics, including Video Graphics, Light Pens, Digitizers, Scanners, and Touch Screens
Network Equipment
Other Communications Equipment
Optical Recognition Input/Output Devices
Storage Devices, including Magnetic Storage, Magnetic Tape Storage and Optical Disk Storage
Other Input/Output and Storage Devices Not Elsewhere Classified

FSC Class 7035—ADP Support Equipment

ADP Support Equipment

FSC Class 7042—Mini and Micro Computer Control Devices

Microcomputer Control Devices
Telephone Answering and Voice Messaging Systems

FSC Class 7050—ADP Components

ADP Boards

FSC Class 5995—Cable, Cord, and Wire Assemblies: Communications Equipment

Communications Equipment Cables

FSC Class 6015—Fiber Optic Cables

Fiber Optic Cables

FSC Class 6020—Fiber Optic Cable Assemblies and Harnesses

Fiber Optic Cable Assemblies and Harnesses

FSC Class 6145—Wire and Cable, Electrical

Coaxial Cables

FSC Class 5805—Telephone and Telegraph Equipment

Telephone Equipment
Audio and Video Teleconferencing Equipment

FSC Class 5810—Communications Security Equipment and Components

Communications Security Equipment

FSC Class 5815—Teletype and Facsimile Equipment

Facsimile Equipment (FAX)

FSC Class 5820—Radio and Television Communication Equipment, Except Airborne

Two-Way Radio Transmitters/Receivers/Antennas
Broadcast Band Radio Transmitters/Receivers/Antennas
Microwave Radio Equipment/Antennas and Waveguides
Satellite Communications Equipment

FSC Class 5821—Radio and Television Communication Equipment, Airborne

Airborne Radio Transmitters/Receivers

FSC Class 5825—Radio Navigation Equipment, Except Airborne

Radio Navigation Equipment/Antennas

FSC Class 5826—Radio Navigation Equipment, Airborne

Airborne Radio Navigation Equipment

FSC Class 5830—Intercommunication and Public Address Systems, Except Airborne

Pagers and Public Address Systems (wired and wireless transmission, including background music systems)

FSC Class 5841—Radar Equipment, Airborne

Airborne Radar Equipment

FSC Class 5895—Miscellaneous Communication Equipment

Miscellaneous Communications Equipment
Special Physical, Visual, Speech, and Hearing Aid Equipment
Used Equipment
Installation for equipment offered under SIN 132–8 (FPDS Code N070)
Deinstallation for equipment offered under SIN 132–8 (FPDS Code N070)
Reinstallation for equipment offered under SIN 132–8 (FPDS Code N070)
Special Item No. 132–12 Maintenance of Equipment, Repair Service, and Repair Parts/Spare Parts (FPDS Code for Maintenance and Repair Service—J070; FSC Class for Repair Parts/Spare Parts—See FSC Class for basic equipment)
Special Item No. 132–32 Term Software Licenses

FSC Class 7030—Information Technology Software

Large Scale Computers

Operating System Software
Application Software
Electronic Commerce (EC) Software
Utility Software
Communications Software
Core Financial Management Software
Ancillary Financial Systems Software
Special Physical, Visual, Speech, and Hearing Aid Software

Microcomputers

Operating System Software
Application Software
Electronic Commerce (EC) Software
Utility Software
Communications Software
Core Financial Management Software
Ancillary Financial Systems Software
Special Physical, Visual, Speech, and Hearing Aid Software

Special Item No. 132–33 Perpetual Software Licenses

FSC Class 7030—Information Technology Software

Large Scale Computers

Operating System Software
Application Software
Electronic Commerce (EC) Software
Utility Software
Communications Software
Core Financial Management Software
Ancillary Financial Systems Software
Special Physical, Visual, Speech, and Hearing Aid Software

Microcomputers

Operating System Software
Application Software
Electronic Commerce (EC) Software
Utility Software
Communications Software
Core Financial Management Software
Ancillary Financial Systems Software
Special Physical, Visual, Speech, and Hearing Aid Software
Special Item No. 132–34 Maintenance of Software
Special Item No. 132–50 Training Courses for Information Technology Equipment and Software (FPDS Code U012)

Special Item No. 132–51 Information Technology Professional Services
IT Facility Operation and Maintenance (FPDS CODE D301)
IT Systems Development Services (FPDS CODE D302)
IT Systems Analysis Services (FPDS Code D306)
Automated Information Systems Design and Integration Services (FPDS Code D307)
Programming Services (FPDS Code D308)
IT Backup and Security Services (FPDS Code D310)
IT Data Conversion Services (FPDS Code D311)
Computer Aided Design/Computer Aided Manufacturing (CAD/CAM) Services (FPDS Code D313)
IT Network Management Services (FPDS Code D316)
Automated News Services, Data Services, or Other Information Services (FPDS Code D317)
Other Information Technology Services, Not Elsewhere
Classified (FPDS Code D399)
Special Item No. 132–52 Electronic Commerce Services FPDS Code D304—ADP and Telecommunications Transmission Services
Value Added Network Services (VANS)
E-Mail Services
Internet Access Services
Navigation Services

**FPDS CODE D399—OTHER DATA TRANSMISSION SERVICES, NOT ELSEWHERE CLASSIFIED (except ''Voice'' and Pager Transmission Services)**

Special Item No. 132–53 Wireless Services (FPDS Code D304)
Excluding local and long distance voice, data, video, and dedicated transmission services which are NOT mobile)
Paging Services
Cellular/PCS Voice Services

*Corporate Schedule Special Item Numbers*

- C 5805, Telephone and Telegraph Equipment
- C 5810, Communications Security Equipment and Components
- C 5815, Teletype and Facsimile Equipment (includes Ticker, Tape and Sigtot Equipment)
- C 5820C, Radio and Television Communication Equipment, Except Airborne, Includes Telemetering Equipment; Monitors and Monitors/Receivers, Including Spare & Repair Parts and Accessories; Television Cameras, Color or Monochrome, Including Spare & Repair Parts and Accessories; Audio Equipment, Including Spare and Repair Parts & Accessories; Telecommunications Equipment, Including Spare and Repair Parts & Accessories.
- C 5821B, Radio and Television Communication Equipment, Airborne, Includes Telemetering Equipment.
- C 5825, Radio Navigation Equipment, Except Airborne, Includes Loran Equipment; Shoran Equipment; Direction Finding Equipment.
- C 5826, Radio Navigation Equipment, Airborne, Includes Loran Equipment; Shoran Equipment; Direction Finding Equipment.
- C 5830, Intercommunication and Public Access Systems, Except Airborne, Includes Wired Audio Systems; Office Type Systems; Shipboard Systems; Tank Systems.
- C 5841, Radar Equipment, Airborne, Note-Radar assemblies and subassemblies designed specifically for use with fire control equipment or guided missiles are excluded from this class and are included in the appropriate classes of Group 12 or Group 14.
- C 5895B, IT Communication Equipment.
- C 5995, Cable, Cord, and Wire Assemblies: Communications Equipment, Includes only those types of cable, cord, and Wire Assemblies and Sets (and Wiring Harnesses) used on or with equipment and components covered by Groups 58 and 59.
- C 6015, Fiber Optic Cables.
- C 6020, Fiber Optic Cable Assemblies and Harnesses.
- C 6145B, Coaxial Cable for IT.
- C 7010, UT Equipment System Configuration.
- C 7025, IT Input/Output and Storage Devices.
- C 7030, IT Software.
- C 7035, IT Support Equipment.
- C 7042, Mini and Micro Computer Control Devices.
- C 7050, IT Components.
- C D301, IT Facility Operation and Maintenance Services.
- C D302, IT Systems Development Services.
- C D304, IT Telecommunications and Transmission Services.
- C D306, IT Systems Analysis Services.
- C D307, Automated Information System Design and Integration Services.
- C D308, Programming Services.
- C D310, IT Backup and Security Services.
- C D311, IT Data Conversion Services.
- C D313, Computer Aided Design/Computer Aided. Manufacturing (CAD/CAM).
- C D316, Telecommunications Network Management Services.
- C D317, Automated News Services, Data Services, or Other Information Services.
- C D399, Other ADP and Telecommunications Services (includes data storage on tapes, compact disks, etc.).
- C J070, Information Technology—Maintenance of Equipment, Repair Services and/or Repair/Spare Parts.
- C N070, Information Technology Installation of IT Equipment (including firmware), software, supplies and support equipment.
- C U012, IT Software, Equipment, and Telecommunications Training.
- C W070, Lease or Rental of Equipment.

**D. Unfunded Mandates Reform Act and Executive Order 13132**

The following statutes and Executive orders do not apply to this rulemaking: Unfunded Mandates Reform Act of 1995; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; and Executive Order 13132, Federalism.

**E. Executive Order 12866**

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**F. Regulatory Flexibility Act**

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the IRFA are available from the Regulatory Secretariat. GSA will consider comments from small entities concerning the affected GSAR Parts 511, 516, 532, 538, and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.*, GSAR case 2002-G505, in correspondence. The IRFA indicates that the interim rule will affect large and small entities including small businesses that are awarded Schedule 70 contracts and Corporate Schedule contracts containing IT SINs, under the GSA Federal Supply Schedule program; non-schedule contractors, including small businesses, contracting with State or local governments; and small governmental jurisdictions that will be eligible to place orders under Schedule 70 contracts and Corporate Schedule

contracts containing IT SINs. The analysis is as follows:

This Initial Regulatory Flexibility Analysis has been prepared consistent with the criteria of 5 U.S.C. 604.

1. Description of the reasons why action by the agency is being considered.

To implement section 211, Authorization for Acquisition of Information Technology by States and Local Governments through Federal Supply Schedules, of the E-Government Act of 2002 (Pub. L. 107–347). Section 211 amends section 502 of title 40, United States Code, to authorize the Administrator to provide for use by State or local governments of Federal Supply Schedules of the General Services Administration for automated data processing equipment (including firmware), software, supplies, support equipment, and services. The rule opens the Federal Supply Schedule 70 and Corporate Schedule contracts containing information technology (IT) Special Item Numbers (SINs), for use by other governmental entities to enhance intergovernmental cooperation.

2. Succinct statement of the objectives of, and legal basis for the interim rule.

The interim rule will implement section 211 of the E-Government Act of 2002 with the objective of opening the Federal Supply Schedule 70 and Corporate Schedule contracts containing IT SINs for use by other governmental entities to enhance intergovernmental cooperation. The goal of the new rule is to make ''government'' (considering all levels) more efficient by reducing duplication of effort and utilizing volume purchasing techniques for the acquisition of IT products and services.

3. Description of, and where feasible, estimate of the number of small entities to which the interim rule will apply.

The rule will affect large and small entities including small businesses, that are awarded Schedule 70 contracts and Corporate Schedule contracts containing IT SINs, under the GSA Federal Supply Schedule program; non-schedule contractors, including small businesses, contracting with State or local governments; and small governmental jurisdictions that will be eligible to place orders under Schedule 70 and Corporate Schedule contracts containing IT SINs. Approximately sixty-eight percent (2,300) of GSA Schedule 70 contractors are small businesses and approximately sixty-eight percent (125) of Corporate Schedule contractors are small businesses. All of those small business Schedule 70 contractors, and Corporate Schedule contractors, containing IT SINs will be allowed, at the schedule contractor's option, to accept orders from State and local governments. Obviously, the expanded authority to order from Schedule 70 and Corporate Schedule contracts containing IT SINs, could increase the sales of small business schedule contractors. It is difficult to identify the number of non-schedule small businesses that currently sell directly to State and local governments. The ability of governmental entities to use Schedule 70 and Corporate Schedule contracts containing IT SINs, may affect the competitive marketplace in which those small businesses operate. State and local government agencies could realize lower prices on some products and services, less administrative burden and shortened procurement lead times. The rule does not affect or waive State or local government preference programs. Finally, small governmental jurisdictions will also be affected. The 50 states, 3139 counties, 19,365 incorporated municipalities, 30,386 minor subdivisions, 3,200 public housing authorities, 14,178 school districts, 1,625 public educational institutions of higher learning, and 550 Indian tribal governments would be among those affected if they chose to order from Schedule 70 and Corporate Schedule contracts containing IT SINs. Federal Supply Schedule contracts are negotiated as volume purchase agreements, with generally very favorable pricing. The ability of small governmental entities to order from Schedule 70 and associated Corporate Schedule contracts holds out the potential for significant cost savings for those organizations.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The interim rule makes changes in certain provisions or clauses in order to recognize the fact that authorized non-federal ordering activities may place orders under the contract. The Office of Management and Budget under the Paperwork Reduction Act has previously approved these clauses and the changes do not impact the information collection or recordkeeping requirements.

5. Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the rule.

The interim rule does not duplicate, overlap, or conflict with any other Federal rules.

6. Description of any significant alternatives to the interim rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities.

There are no practical alternatives that will accomplish the objective of this rule.

## G. Paperwork Reduction Act

The new provision at GSAR 552.232–82, Contractor's Remittance (Payment) Address, contains an information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The provision provides for the offeror to indicate the payment address to which checks should be mailed for payment of invoices and provides for the offeror to identify participating dealers and provide their addresses for receiving orders and payments on behalf of the contractor. This information is the same as is normally required in the commercial world and does not represent a Government-unique information collection. Therefore, the estimated burden for this clause under the Paperwork Reduction Act is zero. GSA has a blanket approval under control number 3090–0250 from OMB for information collections with a zero burden estimate.

The new clause at GSAR 552.232–83, Contractor's Billing Responsibilities, contains a recordkeeping requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The clause provides for the contractor to require all dealers participating in the performance of the contract to agree to maintain certain records on sales made under the contract on behalf of the contractor. The records required are the same as those normally maintained by dealers in the commercial world and do not represent a Government-unique recordkeeping requirement. Therefore, the estimated burden for this clause under the Paperwork Reduction Act is zero. GSA has a blanket approval under control number 3090–0250 from OMB for information collections with a zero burden estimate.

The revised clause at GSAR 552.238–75, Price Reductions, contains an information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) that has previously been approved by the OMB under the Paperwork Reduction Act and assigned control number 3090–0235. The changes made to the clause by this rule do not have an impact on the information collection requirement, which was previously approved. Therefore, it has not been submitted to OMB for approval under the Act.

## H. Determination To Issue an Interim Rule

A determination has been made under the authority of the Administrator of General Services that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Section 211 of the E–Government Act of 2002, signed by the President on December 17, 2002. This case was published for public comment as a proposed rule at 68 FR 3220, January 23, 2003, and resulting comments have been incorporated into the rule. GSA wishes to obtain public comments on the changes. Due to the statutory deadline, the rule is being issued as an interim rule rather than as a second proposed rule. Title IV, Section 402 of the Act directed that within 120 days, the Administrator of General Services implement the provision of the Act. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule

will be considered in formulating the final rule.

**List of Subjects in 48 CFR Parts 511, 516, 532, 538, 546, and 552**

Government procurement.

Dated: May 2, 2003.

**David A. Drabkin,**

*Deputy Associate Administrator, Office of Acquisition Policy.*

■ Therefore, GSA amends 48 CFR parts 511, 516, 532, 538, 546, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 511, 516, 532, 538, 546, and 552 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c).

## PART 511—DESCRIBING AGENCY NEEDS

■ 2. Amend section 511.204 in paragraphs (c)(3) and (d) by adding a sentence to the end of each paragraph to read as follows:

### 511.204 Solicitation provisions and contract clauses.

* * * * *

(c) * * *

(3) * * * In solicitations and contracts for FSS Schedule 70 and the Corporate Schedule containing information technology Special Item Numbers, use Alternate I.

(d) * * * In solicitations and contracts for FSS Schedule 70 and the Corporate Schedule containing information technology Special Item Numbers, use Alternate I.

## PART 516—TYPES OF CONTRACTS

■ 3. Amend section 516.506 by redesignating paragraph (c) as paragraph (d); adding a new paragraph (c); and revising the last sentence in the newly designated paragraph (d) to read as follows:

### 516.506 Solicitation provisions and contract clauses.

* * * * *

(c) In solicitations and contracts for FSS Schedule 70 and the Corporate Schedule containing information technology Special Item Numbers, use 552.216–72, Placement of Orders, Alternate III, instead of Alternate II.

(d) * * * Use 552.216–73 Alternate II when 552.216–72 Alternate II or Alternate III are prescribed.

## PART 532—CONTRACT FINANCING

■ 4. Revise section 532.206 to read as follows:

### 532.206 Solicitation provisions and contract clauses.

(a) *Discounts for prompt payment.* Include 552.232–8, Discounts for Prompt Payments, in multiple award schedule solicitations and contracts instead of the clause at FAR 52.232–8. In solicitations and contracts for FSS Schedule 70 and the Corporate Schedule containing information technology Special Item Numbers (SINs), use Alternate I.

(b) The contracting officer shall insert the clause at 552.232–81, Payments by Non-Federal Ordering Activities, in solicitations and schedule contracts for Schedule 70 and Corporate Schedule contracts containing information technology SINs.

(c) The contracting officer shall insert the provision at 552.232–82, Contractor's Remittance (Payment) Address, in all Federal Supply Schedule solicitations and contracts.

(d) The contracting officer shall insert the clause at 552.232–83, Contractor's Billing Responsibilities, in all Multiple Award Schedule solicitations and contracts.

### 532.7003 Contract clause.

■ 5. Amend section 532.7003 by revising paragraph (b); and adding a new paragraph (c) to read as follows:

* * * * *

(b) *Federal Supply Service contracts.* Use Alternate I of the clause at 552.232–77 for all FSS schedule solicitations and contracts, except Federal Supply Schedule 70, Information Technology, and the Corporate Schedule contracts containing Information Technology Special Item Numbers.

(c) *Federal Supply Service schedule contracts for information technology Special Item Numbers.* In solicitations and contracts for FSS Schedule 70 and the Corporate Schedule containing information technology Special Item Numbers, use 552.232–79 instead of 552.232–77.

## PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

### 538.272 [Amended]

■ 6. Amend paragraph (a) of section 538.272 by removing ''Government'' each time it is used (twice) and adding ''eligible ordering activities'' in its place.

■ 7. Amend section 538.273 by revising the introductory text of paragraph (a)(2); and adding a sentence at the end of paragraph (b)(2) to read as follows:

### 538.273 Contract clauses.

(a) * * *

(2) 552.237–71, Submission and Distribution of Authorized FSS Schedule Pricelists. In solicitations and contracts for FSS Schedule 70 and the Corporate Schedule contracts containing information technology Special Item Numbers, use Alternate I. If GSA is not prepared to accept electronic submissions for a particular schedule, delete:

* * * * *

(b) * * * In solicitations and contracts for FSS Schedule 70 and the Corporate Schedule contracts containing information technology Special Item Numbers, use Alternate I.

■ 8. Add Subpart 538.70 to read as follows:

## Subpart 538.70 Cooperative Purchasing

Sec.



### 538.7000 Scope of subpart.

This subpart prescribes policies and procedures that implement statutory provisions authorizing non-federal organizations to use Schedule 70 and Corporate Schedule contracts containing information technology Special Item Numbers (SINs).

### 538.7001 Definitions.

*Ordering activity* (also called ''ordering agency'' and ''ordering office'') means an eligible ordering activity (see 552.238–78) authorized to place orders under Federal supply schedule contracts.

*Schedule 70,* as used in this subpart, means Schedule 70 information technology contracts, and corporate schedule contracts containing information technology SINs. The Corporate Schedule is a compilation of multiple individual Federal Supply Schedules; therefore, only the SINs that fall under Schedule 70 of the Corporate Schedule will apply to Cooperative Purchasing. No other Schedules, or SINs, containing information technology outside of Schedule 70 SINs, and corporate schedule contracts containing Schedule 70 SINs, will apply.

*State and local government entities,* as used in this subpart, means the states of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or

interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.

(1) *Local educational agency* has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(2) *Institution of higher education* has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) *Tribal government* means—

(i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

#### 538.7002 General.

(a) 40 U.S.C. 501, (the Act) authorizes the Administrator of General Services to procure and supply personal property and nonpersonal services for the use of Executive agencies. Under 40 U.S.C. 502, the goods and services available to executive agencies are also available to mixed ownership Government corporations, establishments within the legislative or judicial branches of Government (excepting the Senate, House of Representatives, Architect of the Capitol, and any activities under the direction of the Architect of the Capitol), the District of Columbia, and Qualified Non-profit Agencies.

(b) Section 211 of the E–Government Act of 2002 amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide for use of certain Federal supply schedules of the GSA by a State or local government, which includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education).

(c) State and local governments are authorized to procure only from the information technology Federal Supply Schedule (Schedule 70) contracts and Corporate Schedule contracts containing information technology SINs. A listing of the participating contractors and SINs for the products and services that are available through Schedule 70 and Corporate Schedule contracts containing information technology SINs, is available in GSA's Schedules e-Library at web site *http://fss.gsa.gov/elibrary.* Click on Schedules e-Library and then click on the ICON labeled Cooperative Purchasing, State and Local. The contractors and the products and services available for cooperative purchasing will be labeled with the ICON.

#### 538.7003 Policy.

*Preparing solicitations when schedules are open to eligible non-federal entities.* When opening Schedule 70 and the Corporate Schedule containing information technology SINs, for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete ''Government'' or similar language referring to the U.S. Government and substitute ''ordering activity'' or similar language when preparing solicitations and contracts to be awarded under Schedule 70 and the Corporate Schedule containing information technology SINs. When such changes are made, the word ''(DEVIATION)'' shall be added at the end of the title of the provision or clause. These clauses include but are not limited to:

(a) 52.212–4, Contract Terms and Conditions—Commercial Items.

(b) 52.216–18, Ordering.

(c) 52.216–19, Order Limitations.

(d) 52.229–1, State and Local Taxes.

(e) 52.229–3, Federal, State, and Local Taxes.

(f) 52.232–7, Payments Under Time-and-Materials and Labor-Hour Contracts.

(g) 52.232–17, Interest.

(h) 52.232–19, Availability of Funds for the Next Fiscal Year.

(i) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration

(j) 52.232–36, Payment by Third Party.

(k) 52.237–3, Continuity of Services.

(l) 52.246–4, Inspection of Services-Fixed Price.

(m) 52.246–6, Inspection-Time-and-Material and Labor-Hour.

(n) 52.247–34, F.O.B. Destination.

(o) 52.247–38, F.O.B. Inland Carrier Point of Exportation.

#### 538.7004 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.238–77, Definition (Federal Supply Schedules), in solicitations and schedule contracts for Schedule 70 and the Corporate Schedule contracts containing information technology SINs.

(b) The contracting officer shall insert the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for Schedule 70 and the Corporate Schedule contracts containing information technology SINs.

(c) The contracting officer shall insert the clause at 552.238–79, Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing, in solicitations and Schedule 70 contracts and the Corporate Schedule contracts containing information technology SINs.

(d) *See* 552.107–70 for authorized FAR deviations.

## PART 546—QUALITY ASSURANCE

■ 9. Amend section 546.710 in paragraph (b) by adding a sentence to the end of the paragraph to read as follows:

#### 546.710 Contract clauses.

* * * * *

(b) * * * In solicitations and contracts for FSS Schedule 70 and the Corporate Schedule containing information technology Special Item Numbers, use Alternate I.

## PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Amend section 552.211–75 by adding Alternate I to read as follows:

#### 552.211–75 Preservation, Packaging and Packing.

* * * * *

*Alternate I (May 2003).* As prescribed at 511.204(c)(3), insert the following sentence in place of the last sentence of the clause:

Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering activity and the Contractor.

■ 11. Amend section 552.211–77 by adding Alternate I to read as follows:

#### 552.211–77 Packing List.

* * * * *

*Alternate I (May 2003).* As prescribed at 511.204(d), substitute the following paragraphs (a)(3) and (b) for (a)(3) and (b) of the basic clause:

(a)(3) Ordering activity order or requisition number;

(b) When payment will be made by Ordering activity commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include:

(1) Cardholder name and telephone number; and

(2) The term ''Credit Card.''

■ 12. Amend section 552.216–72 by adding Alternate III to read as follows:

**552.216–72 Placement of Orders.**

* * * * *

*Alternate III (May 2003).* As prescribed in 516.506(c), substitute the following paragraphs (a), (c), and (d) for paragraphs (a), (c), and (d) of the basic clause:

(a) See 552.238–78, Scope of Contract (Eligible Ordering Activities), for who may order under this contract.

(c) If the Contractor agrees, GSA's Federal Supply Service (FSS) will place orders for eligible ordering activities, as defined in paragraph (a) of the clause at 552.238–78, by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FSS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor's agreement, other eligible ordering activities, as defined in paragraphs (a) and (b) of the clause at 552.238–78, may also place orders by EDI.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each ordering activity placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation. Ordering activities may obtain a sample format to customize as needed from the office specified in paragraph (g) of this clause.

■ 13. Amend section 552.232–8 by adding Alternate I to read as follows:

**552.232–8 Discounts for Prompt Payment.**

* * * * *

*Alternate I (May 2003).* As prescribed in 532.206(a), remove paragraph (d) and redesignate paragraphs (e), (f), and (g) as (d), (e), and (f), respectively.

■ 14. Add section 552.232–79 to read as follows:

**552.232–79 Payment by Credit Card.**

■ As prescribed in 532.7003(c) insert the following clause:

Payment By Credit Card (May 2003)

(a) *Definitions.*

*Credit card* means any credit card used to pay for purchases, including the Governmentwide Commercial Purchase Card.

*Governmentwide commercial purchase card* means a uniquely numbered credit card issued by a Contractor under GSA's Governmentwide Contract for Fleet, Travel, and Purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

*Oral order* means an order placed orally either in person or by telephone.

(b) The Contractor must accept the credit card for payments equal to or less than the micro-purchase threshold (see Federal Acquisition Regulation 2.101) for oral or written orders under this contract.

(c) The Contractor and the ordering agency may agree to use the credit card for dollar amounts over the micro-purchase threshold, and the Government encourages the Contractor to accept payment by the purchase card. The dollar value of a purchase card action must not exceed the ordering agency's established limit. If the Contractor will not accept payment by the purchase card for an order exceeding the micro-purchase threshold, the Contractor must so advise the ordering agency within 24 hours of receipt of the order.

(d) The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed.

Unless the cardholder requests correction or replacement of a defective or faulty item under other contract requirements, the Contractor must immediately credit a cardholder's account for items returned as defective or faulty.

(e) Payments made using the Governmentwide commercial purchase card are not eligible for any negotiated prompt payment discount. Payment made using an ordering activity debit card will receive the applicable prompt payment discount. (End of clause)

■ 15. Add sections 552.232–81, 552.232–82, and 552.232–83 to read as follows:

**552.232–81 Payments by Non-Federal Ordering Activities.**

As prescribed in 532.206(b), insert the following clause:

Payments By Non-Federal Ordering Activities (May 2003)

If eligible non-federal ordering activities are subject to a State prompt payment law, the terms and conditions of the applicable State law apply to the orders placed under this contract by such activities. If eligible non-federal ordering activities are not subject to a State prompt payment law, the terms and conditions of the Federal Prompt Payment Act as reflected in Federal Acquisition Regulation clause 52.232–25, Prompt Payment, or 52.212–4, Contract Terms and Conditions—Commercial Items, apply to such activities in the same manner as to Federal ordering activities. (End of clause)

**552.232–82 Contractor's Remittance (Payment) Address.**

As prescribed in 532.206(c), insert the following provision:

Contractor's Remittance (Payment) Address (May 2003)

(a) Payment by electronic funds transfer (EFT) is the preferred method of payment. However, under certain conditions, the ordering activity may elect to make payment by check. The offeror shall indicate below the payment address to which checks should be mailed for payment of proper invoices submitted under a resultant contract.

Payment Address: _____

_____

_____

_____

_____

(b) Offeror shall furnish by attachment to this solicitation, the remittance (payment) addresses of all authorized participating dealers receiving orders and accepting payment by check in the name of the Contractor in care of the dealer, if different from their ordering address(es) specified elsewhere in this solicitation. If a dealer's ordering and remittance address differ, both must be furnished and identified as such.

(c) All offerors are cautioned that if the remittance (payment) address shown on an actual invoice differs from that shown in paragraph (b) of this provision or on the attachment, the remittance address(es) in paragraph (b) of this provision or attached will govern. Payment to any other address, except as provided for through EFT payment methods, will require an administrative change to the contract.

**Note:** All orders placed against a Federal Supply Schedule contract are to be paid by the individual ordering activity placing the order. Each order will cite the appropriate ordering activity payment address, and proper invoices should be sent to that address. Proper invoices should be sent to GSA only for orders placed by GSA. Any other ordering activity's invoices sent to GSA will only delay your payment. (End of provision)

**552.232–83 Contractor's Billing Responsibilities.**

As prescribed in 532.206(d), insert the following clause:

Contractor's Billing Responsibilities (May 2003)

The Contractor is required to perform all billings made pursuant to this contract. However, if the Contractor has dealers that participate on the contract and the billing/payment process by the Contractor for sales made by the dealer is a significant administrative burden, the following alternative procedures may be used. Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor's name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to—

(1) Comply with the same terms and conditions regarding prices as the Contractor for sales made under the contract;

(2) Maintain a system of reporting sales under the contract to the manufacturer, which includes—

(i) The date of sale;

(ii) The ordering activity to which the sale was made;

(iii) The service or product/model sold;

(iv) The quantity of each service or product/model sold;

(v) The price at which it was sold, including discounts; and

(vi) All other significant sales data.

(3) Be subject to audit by the Government, with respect to sales made under the contract; and

(4) Place orders and accept payments in the name of the Contractor in care of the dealer.

An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government. (End of clause)

■ 16. Amend section 552.238–71 by adding Alternate I to read as follows:

**552.238–71 Submission and Distribution of Authorized FSS Schedule Pricelists.**

* * * * *

*Alternate I (May 2003).* As prescribed in 538.273(a)(2), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) *Definition.* For the purposes of this clause, the Mailing List is [*Contracting officer shall insert either: ''the list of addressees provided to the Contractor by the Contracting Officer'' or ''the Contractor's listing of its ordering activity customers''*].

■ 17. Amend section 552.238–75 by adding Alternate I to read as follows:

**552.238–75 Price Reductions.**

* * * * *

*Alternate I (May 2003).* As prescribed in 538.273(b)(2), substitute the following paragraph (c)(2) for paragraph (c)(2) of the basic clause, and substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause.

(c)(2) The Contractor shall offer the price reduction to the eligible ordering activities with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d)(2) To eligible ordering activities under this contract; or

■ 18. Add sections 552.238–77 through 552.238–79 to read as follows:

**552.238–77 Definition (Federal Supply Schedules).**

As prescribed in 538.7004(a), insert the following clause:

Definition (Federal Supply Schedules) (May 2003)

*Ordering activity* (also called ''ordering agency'' and ''ordering office'') means an eligible ordering activity (see 552.238–78) authorized to place orders under Federal Supply Schedule contracts. (End of clause)

**552.238–78 Scope of Contract (Eligible Ordering Activities).**

As prescribed in 538.7004(b), insert the following clause:

Scope of Contract (Eligible Ordering Activities) (May 2003)

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for delivery within the 48 contiguous States and Washington, D.C. For Special Item Number 132–53 Wireless Services ONLY, limited geographic coverage (consistent with the Offeror's commercial practice) may be proposed. Resultant contracts may also be used for delivery to Alaska, Hawaii, the Commonwealth of Puerto Rico, and overseas locations.

(1) Executive agencies (as defined in FAR Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101—26.000);

(2) Government contractors authorized in writing by a Federal agency pursuant to FAR 51.1;

(3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act);

(4) Federal Agencies, including establishments in the legislative or judicial branch of government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

(5) The District of Columbia;

(6) Tribal governments when authorized under 25 U.S.C. 450j(k);

(7) Qualified Nonprofit Agencies as authorized under 40 U.S.C. 502(b); and

(8) Organizations, other than those identified in paragraph (b) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(b) The following activities may place orders against information technology schedule 70 contracts and Corporate Schedule contracts containing information technology special item numbers, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities:

State and local government, includes any state, local, regional or tribal government or any instrumentality thereof (including any local educational agency or institution of higher learning).

(c) Articles or services may be ordered from time to time in such quantities as may be needed to fill any requirement, subject to the Order Limitations thresholds which will be specified in resultant contracts. Overseas activities may place orders directly with schedule contractors for delivery to CONUS port or consolidation point.

(d) For orders received from activities within the Executive Branch of the Government, each Contractor is obligated to deliver all articles or services contracted for that may be ordered during the contract term, except as otherwise provided herein.

(e) The Contractor is not obligated to accept orders received from activities outside the Executive Branch; however, the Contractor is encouraged to accept such orders. If the Contractor is unwilling to accept such an order, the Contractor shall decline the order in accordance with 552.238–79(6)(b)(2). Failure to return an order shall constitute acceptance whereupon all provisions of the contract shall apply.

(f) The Government is obligated to purchase under each resultant contract a guaranteed minimum of $2,500 (two thousand, five hundred dollars) during the contract term. (End of clause)

**552.238–79 Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing.**

As prescribed in 538.7004(c), insert the following clause:

Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing (May 2003)

(a) If an entity identified in paragraph (b) of the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities), elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies ''Compliance with laws unique to Government contracts'' (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (*e.g.*, FAR 52.212–4 at paragraph (f) and FSS clause I–FSS–249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation or order as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering

activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (b) of the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities), the Contractor agrees to the following conditions:

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(c) In accordance with clause 552.238–74, Contractor's Report of Sales, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the contractor must report two dollar values for each Special Item Number: (1) the dollar value for sales to entities identified in paragraph (a) of the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities), and (2) the dollar value for sales to entities identified in paragraph (b) of clause 552.238–78. (End of clause)

■ 19. Amend section 552.246–73 by adding Alternate I to read as follows:

**552.246–73 Warranty—Multiple Award Schedule.**

* * * * *

*Alternate I (May 2003).* As prescribed in 546.710(b), substitute the following paragraphs (b)(1) and (b)(3) for paragraphs (b)(1) and (b)(3) of the basic clause:

(b)(1) The Contractor must provide, at a minimum, a warranty on all non-consumable parts for a period of 90 days from the date that the ordering activity accepts the product.

(b)(3) The Contractor must bear the transportation costs of returning the products to and from the repair facility, or the costs involved with Contractor personnel traveling to the ordering activity facility for the purpose of repairing the product onsite, during the 90-day warranty period.

[FR Doc. 03–11271 Filed 5–5–03; 8:45 am]

BILLING CODE 6820–BR–P

# Proposed Rules

Federal Register
Vol. 68, No. 88
Wednesday, May 7, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NE–08–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce plc RB211 Trent 800 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce plc (RR) RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines with intermediate pressure (IP) turbine discs, part numbers (P/Ns) FK21117 and FK33083 installed. This proposed AD would require removal from service of these IP turbine discs in accordance with newly established reduced turbine disc life limits. This proposed AD is prompted by reports of two IP turbine blade release incidents as a result of dust caps separating from the blades, and subsequent improved modeling analysis. The actions specified in this proposed AD are intended to prevent uncontained IP turbine disc failure and damage to the airplane.

**DATES:** We must receive any comments on this proposed AD by July 7, 2003.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD:

- Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-NE–08-AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7176; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003-NE–08-AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.plainlanguage.gov.*

### Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

### Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified the FAA that an unsafe condition may exist on RR RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines. The CAA advises that reports were received of two IP turbine blade release incidents as a result of dust caps separating from the blades. Subsequently, the manufacturer applied improved modeling techniques for analysis, which revealed higher than predicted operating temperatures at the IP turbine disc rim and surrounding area due to inflow of annulus exhaust gases. As a result of this analysis, the manufacturer has assigned new lower life limits of 8,600 cycles-since-new (CSN) for IP turbine disc P/N FK21117, and 3,000 CSN for IP turbine disc P/N FK33083.

### FAA's Determination and Requirements of the Proposed AD

These RR RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines, manufactured in the U.K., are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept us informed of the situation described above. We have examined the CAA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require replacing IP turbine discs, P/Ns FK21117 and FK33083, at or before reaching the new reduced life cycle limits of 8,600 CSN and 3,000 CSN respectively.

### Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

### Costs of Compliance

There are approximately 350 RR RB211 Trent 875–17, Trent 877–17,

Trent 884–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines of the affected design in the worldwide fleet. We estimate that 114 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that the prorated cost of the life reduction per engine would be approximately $246,000. Based on these figures, the total cost of the proposed AD is estimated to be $28,044,000.

**Regulatory Findings**

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–08–AD'' in your request.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**Rolls-Royce plc:** Docket No. 2003–NE–08–AD.

**Comments Due Date**

(a) The Federal Aviation Administration must receive comments on this airworthiness directive (AD) action by July 7, 2003.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD is applicable to Rolls-Royce plc (RR) RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines with intermediate pressure (IP) turbine discs P/Ns FK21117 and FK33083 installed. These engines are installed on, but not limited to Boeing 777 airplanes.

**Unsafe Condition**

(d) This AD was prompted by reports of two IP turbine blade release incidents as a result of dust caps separating from the blades. Subsequently, the manufacturer applied improved modeling techniques for analysis, which revealed higher than predicted operating temperatures at the IP turbine disc rim and surrounding area due to inflow of annulus exhaust gases. The actions specified in this AD are intended to prevent uncontained IP turbine disc failure and damage to the airplane.

**Compliance**

(e) Compliance with this AD is required as indicated, unless already done.

(f) To prevent uncontained IP turbine disc failure and damage to the airplane, do the following:

(1) Remove IP turbine disc P/N FK21117 from service at or before accumulating 8,600 cycles-since-new (CSN), and remove IP turbine disc P/N FK33083 from service at or before accumulating 3,000 CSN.

(2) After the effective date of this AD, do not install any IP turbine disc P/N FK21117, that exceeds 8,600 CSN, or any IP turbine disc P/N FK33083, that exceeds 3,000 CSN.

**Alternative Methods of Compliance**

(g) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, FAA.

**Material Incorporated by Reference**

(h) None.

**Related Information**

(i) The subject of this AD is addressed in CAA airworthiness directive 002–01–2003, dated January 14, 2003.

Issued in Burlington, Massachusetts, on April 30, 2003.

**Francis A. Favara,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03–11267 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 23 CFR Part 630

**[FHWA Docket No. FHWA–2001–11130]**

**RIN 2125–AE29**

## Work Zone Safety and Mobility

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA proposes to amend its regulation that governs traffic safety in highway and street work zones. The FHWA recognizes that increasing road construction activity on our highways can lead to an increase in congestion and crashes, as well as loss in productivity and public frustration with work zones. These proposed changes are intended to facilitate consideration of the broader safety and mobility impacts of work zones in a more coordinated and comprehensive manner across project development stages.

**DATES:** Comments must be received on or before September 4, 2003.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov*

**FOR FURTHER INFORMATION CONTACT:** Mr. Scott Battles, Office of Transportation Operations, HOTO–1, (202) 366–4372; or Mr. Raymond Cuprill, Office of the

Chief Counsel, HCC–30, (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access and Filing**

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code for Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's Home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

**Background**

*Overview of the Proposal*

The principal mission of the U.S. Department of Transportation (USDOT) is to provide the American people with a transportation system that is safe, effective, and secure. Transportation is vital to our Nation's economy, national security, and quality of life. We depend on transportation for access to jobs, to enable us to conduct our business, to supply us with services and goods, and to facilitate our leisure and recreational activities. When we take appropriate action to address our mobility needs, we can also improve the safety of our system and enhance our natural and human environment. We also find that there is a decrease in safety and a degradation in environment when we do not address critical mobility issues on our highway system. To help attain the mission of the USDOT, the FHWA has identified strategic goals in the areas of safety, mobility and productivity, environment, National security, and organizational excellence. Under the ''mobility and productivity'' area, the FHWA has identified ''congestion reduction'' as one of the vital few strategies. One way to reduce congestion is to improve the performance of our Nation's ''work zones.''

The FHWA proposes to amend 23 CFR part 630 subpart J, ''Traffic Safety in Highway and Street Work Zones.'' Work zones cause safety and mobility impacts on the traveling public, businesses, workers, and transportation agencies, resulting in an overall loss in productivity and growing frustration. These work zone impacts are exacerbated by growing congestion in many locations. The FHWA recognizes the trends of increased road construction, growing traffic, increased crashes, and public frustration with work zones. These trends call for a more broad-based understanding and examination of the safety and mobility impacts of work zones on road users, other affected parties, and workers. Better addressing work zone safety and mobility requires consideration of work zone issues starting early in project development and continuing through project completion.

The current regulation has a broadly stated purpose of providing guidance and establishing procedures to ensure that adequate consideration is given to motorists, pedestrians, and construction workers on all Federal-aid construction projects. However, the content of the current regulation is focused primarily on the development of traffic control plans (TCPs), the operation of work zones on two-lane, two-way roadways, and other provisions that address project responsibility, pay items, training and process review and evaluation. These provisions in the current regulation primarily address the issue of traffic control through the work zone itself. At the time this regulation was written, the TCP was an important concept that was and still is essential for work zone safety. Today's environment includes new challenges due to growing congestion, increasing reconstruction and public frustration with work zones. TCPs for work zones are still essential, but they are no longer a sufficient approach for managing work zone impacts that may extend to an area much bigger than the actual work area. The proposed changes to 23 CFR part 630 subpart J are intended to facilitate consideration of the broader safety and mobility impacts of work zones in a coordinated and comprehensive manner across project development stages. The following is a summary of key proposed changes:

- Title change of 23 CFR part 630 subpart J to ''Work Zone Safety and Mobility.''
- State transportation departments (hereinafter referred to as ''States'') to develop and adopt work zone safety and mobility policies. These policies will support the systematic consideration of the safety and mobility impacts of work zones during project development; and address the safety and mobility needs of all road users (*i.e.*, motorists, pedestrians, bicyclists, and persons with disabilities), workers, and other affected parties (*i.e.*, public facilities such as parks, recreational facilities, fire stations, police stations, and hospitals; and private parties such as businesses and residences) on Federal-aid highway projects.
- States to conduct work zone impacts analysis during project development to better understand individual project characteristics and the associated work zone impacts. This will facilitate better decisionmaking on alternative project options and in the development of appropriate work zone impact mitigation measures.
- States to develop Transportation Management Plans (TMPs) for projects as determined by the State's policy and the results of the work zone impacts analysis. A Transportation Management Plan (TMP) documents the mitigation strategies identified during this analysis. The TMP facilitates a more comprehensive approach to manage the safety and mobility impacts of work zones, by including a Transportation Operations Plan (TOP) and a Public Information and Outreach Plan (PIOP) in addition to the current requirement for a Traffic Control Plan (TCP).
- Provisions that allow States to be more creative and performance oriented in their procurement processes by allowing flexibility to choose either method-based or performance-based specifications for their contracts.

*Statement of the Problem*

Work zones are a necessary part of meeting the need to maintain and upgrade our aging highway infrastructure. As much of the Nation's transportation infrastructure approaches the end of its service life, preservation, rehabilitation, and maintenance become an increasing part of our transportation improvement program.[1] The Transportation Equity Act for the 21st Century (TEA–21), (Pub. L. 105–178, 112 Stat. 107) enacted in June 1998, provides for a 40 percent increase in transportation funding over the total provided in the Intermodal Surface

[1] FHWA report, ''Meeting the Customer's Needs for Mobility and Safety During Construction and Maintenance Operations,'' September 1998. This report is available electronically at: *http://safety.fhwa.dot.gov/fourthlevel/pro_res_wzs_links.htm* or may be obtained by writing the FHWA Office of Safety at, 400 7th Street, SW., Washington, DC 20590.

Transportation Efficiency Act of 1991 (ISTEA), (Pub. L. 102–240; 105 Stat. 1914; Dec. 18, 1991).[2] Much of this funding is being spent on performing capital improvements and maintaining existing roads, since comparatively few new roads are being built.

At the same time, traffic volumes continue to grow and create more congestion. As vehicle travel continues to increase significantly faster than miles of roadway, we have a growing congestion problem that is exacerbated by work zones. From 1980 to 1999, the U.S. experienced a 76 percent increase in total vehicle-miles traveled, while total lane miles of public roads increased only by 1 percent.[3] Congestion affects normal vehicular movement including that of cars, trucks, and buses, and is frustrating and costly to both individuals and businesses. Studies indicate that over the years, ''extremely'' or ''severely'' congested highway miles more than doubled from 1982 to 1997, while uncongested miles dropped by almost half. The Texas Transportation Institute (TTI) estimated that the cost of congestion was approximately $78 billion in 1999. The combination of heavier traffic volumes passing through a road network with more work zones increases the operational and safety impacts of those work zones on the road network. Recent analysis shows that of this congestion, work zones on freeways cause an estimated 24 percent of nonrecurring delay, resulting in lost capacity of 60 million vehicles per day (VPD) in the summer, and that of 64 million VPD in the winter.[4] According to FHWA estimates, about 12.8 percent of the National Highway System is under construction at any time during the summer roadwork season, leading to 3,110 work zones.[5]

Work zones continue to have adverse impacts on traveler and worker safety. Work zone fatalities reached a high of 1,079 in 2001,[6] while over 40,000 people were injured in work zone related crashes in the same year.[7] From 1997 to 2001, over 4,000 people were killed in work zone crashes, with over 220,000 injured; and about 300 workers died in road construction activities during the same time frame, as indicated by the Bureau of Labor Statistics' Census of Fatal Occupational Injuries.[8]

Over the years, highway professionals have devised and implemented several strategies and innovative practices for minimizing the disruption caused by work zones, while ensuring successful project delivery. For example, more work is done during night time to minimize the impacts of work zones on the traveling public by avoiding work during the more heavily traveled daytime hours. However, the current and expected level of investment activity in highway infrastructure (a significant portion of which is for maintenance and reconstruction of existing roadways) implies that increasingly, work will be done under traffic. In 1997, 47.6 percent of highway capital outlay was spent on system preservation (resurfacing, restoration, rehabilitation, reconstruction).

In addition to increased road construction, growing traffic, and increases in crashes, public frustration with work zones indicates that more effort is required to meet the needs and expectations of the American public. The results of a recent FHWA nationwide survey, reported in ''Moving Ahead: The American Public Speaks on Roadways and Transportation in Communities,'' [9] illustrate the American public's frustration with work zones. Work zones were cited as second only to poor traffic flow in causing traveler dissatisfaction. The top three improvements indicated by the public as a ''great help'' to improve roadways and transportation are related to roadway repairs and work zones. They are: (a) More durable paving materials (67 percent); (b) repairs made during non-rush hours (66 percent); and (c) reducing repair time (52 percent). The use of better traffic signs showing expected roadwork, and better guide signs for re-routing traffic to avoid roadwork, were also cited as being of ''great help,'' by 40 percent and 35 percent of the respondents, respectively. Many travelers indicated a preference to have the road closed completely for moderate durations in exchange for long-lasting repairs. About 67 percent of respondents expressed support for one-week long road closures, and 37 percent expressed support for one-month long road closures; while 16 percent of respondents expressed support for a three-month closing, and 10 percent or fewer would support longer closings (six months to a year).

Further, the contracting industry is under pressure to expedite construction and minimize disruption by reducing their work hours, compressing their schedules and shifts, and increasing night work. They have expressed concerns that these pressures affect worker safety, reduce productivity, and may compromise quality. Therefore, a balance must be achieved between construction needs and the safety and mobility needs of the traveling public.

While safety and mobility are two distinct challenges posed by the circumstances faced on highways, it is important to realize that both these elements are closely tied to one another. Studies and data analyses over time indicate that as congestion builds, crash rates increase; and as crashes increase, more congestion occurs. Therefore, it is important to develop comprehensive mitigation measures that alleviate the impacts of work zones and ultimately improve transportation safety and mobility.

*Legislative and Regulatory History*

Section 1051 of ISTEA required the Secretary of Transportation (Secretary) to develop and implement a highway work zone safety program to improve work zone safety at highway construction sites by enhancing the quality and effectiveness of traffic control devices, safety appurtenances, traffic control plans, and bidding practices for traffic control devices and services. The FHWA implemented this provision of ISTEA through non-regulatory action, by publishing a notice in the **Federal Register** on October 24, 1995 (60 FR 54562). (Hereinafter referred to as ''the notice.'')

The purpose of this notice was to establish the National Highway Work Zone Safety Program (NHWZSP) to

[2] Statement of Vincent F. Schimmoller, Deputy Executive Director, FHWA, USDOT, Before The House Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit, Hearing on Work Zone Safety, July 24, 2001. An electronic copy of this statement may be obtained at: *http://www.house.gov/transportation/press/press2001/release100.html*.

[3] ''Status of the Nation's Highways, Bridges, and Transit: Conditions & Performance (C&P) Report to Congress,'' FHWA, 1999. A copy of this report may be obtained electronically at: http://www.fhwa.dot.gov/policy/1999cpr/.

[4] ''Temporary Losses of Capacity Study,'' FHWA, November 5, 2001. A copy of this report may be obtained by writing the FHWA Office of Highway Operations, at 400 7th Street, SW., HOP, Washington, DC 20590.

[5] Interim results from an FHWA study entitled, ''Snapshot of Peak Summer Work Zone Activity.'' This study is currently underway and is expected to be completed in June 2003. Copies of the final report may be obtained electronically at *http://www.ops.fhwa.dot.gov/wz/workzone.htm* or by writing the FHWA Office of Highway Operations, at 400 7th Street, SW., HOP, Washington, DC 20590.

[6] The statistics on work zone crashes for the year 2002 were not officialy available at the time this NPRM was drafted.

[7] Fatal Analysis Reporting System (FARS) maintained by the NHTSA. More information is available electronically at: *http://www-fars.nhtsa.dot.gov/*.

[8] The Bureau of Labor Statistics' Census of Fatal Occupational injuries is available electronically at *http://www.bls.gov/iif/oshcfoi1.htm*.

[9] The results of the survey are available in ''Moving Ahead: The American Public Speaks on Roadways and Transportation in Communities,'' FHWA Publication No. FHWA–OP–01–017, 2000. A copy of this publication is available electronically on the FHWA Web page at: *http://www.fhwa.dot.gov/reports/movingahead.htm*.

enhance safety at highway construction, maintenance and utility sites. In this notice, the FHWA indicated that having appropriate National and State standards and guidelines would contribute to improved work zone safety. To attain these National and State standards and guidelines, the FHWA identified the need to update its regulation on work zone safety, 23 CFR part 630, subpart J.

The notice indicated that the FHWA would review current work zone problems and update the regulation to better reflect current needs including reinforcement of guidance on bidding practices, work zone crash data collection and analysis at both project and program levels, compliance with traffic control plans, and work zone speed limits. While the focus of this notice was ''work zone safety,'' it also identified the need ''to minimize disruptions to traffic during construction of highway projects.''

*Discussion for Considering Policy and Regulation Change*

Since establishing the NHWZSP, the FHWA identified work zone safety and mobility as major concerns to the traveling public, businesses and transportation agencies. Therefore, the FHWA undertook several efforts to better address the unique safety and mobility challenges posed by work zones, including research and development, and compilation of best practices and guidelines. The FHWA is now in the process of updating 23 CFR part 630 subpart J, which governs traffic safety in highway and street work zones. An examination of the current provisions in 23 CFR part 630 subpart J indicate that they reflect the needs and issues that were relevant at the time the regulation was developed, but are no longer comprehensive enough to address the complex issues of today and the future.

The current regulation has a broadly stated purpose of providing guidance and establishing procedures to ensure that adequate consideration is given to motorists, pedestrians, and workers on all Federal-aid construction projects. However, the content of the current regulation is focused primarily on the development of traffic control plans (TCPs), the operation of work zones on two-lane, two-way roadways, and other provisions that address project responsibility, pay items, training and process review and evaluation. These provisions in the current regulation primarily address the issue of traffic control through the work zone itself. At the time this regulation was written, the TCP was an important concept that was and still is essential for work zone safety. Today's environment however, includes new challenges due to growing congestion, increasing reconstruction and public frustration with work zones.

More road work is being done under ever increasing traffic—this leads to further congestion, delays, and increases in fatalities and crashes, thereby placing contractors and workers under pressure and leading to public frustration with work zones. These circumstances and consequences call for a more broad-based examination of the current regulations. TCPs for work zones are still important and essential, but they are no longer a sufficient approach for managing work zone impacts that may extend to an area much bigger than the actual work area.

Through research conducted over the years, and based on feedback from State agencies and the public, the FHWA believes that in order to comprehensively improve work zone safety and mobility, there needs to be a systematic consideration of the safety and mobility impacts of work zones across the different project development stages, and the development of appropriate mitigation measures that help alleviate these impacts. The proposed amendments to 23 CFR part 630 subpart J are intended to facilitate consideration of the broader safety and mobility impacts of work zones in a coordinated and comprehensive manner across project development stages.

As a first step towards the consideration of amending 23 CFR part 630 subpart J, the FHWA issued an advance notice of proposed rulemaking (ANPRM), aimed at identifying the key issues that should be considered if the current regulation were to be updated. The ANPRM entitled ''Work Zone Safety'' was published in the **Federal Register** on February 6, 2002, at 67 FR 5532. The ANPRM comment period ended on June 6, 2002.

Pursuant to the end of the ANPRM comment period, we conducted several outreach sessions with the transportation community to discuss the issues addressed by the ANPRM and to provide a synopsis of the comments received on the ANPRM. The following is a list of the outreach efforts that were undertaken by the FHWA:

- ANPRM presentation and open forum at the 2002 annual meeting of the American Association of State Highway and Transportation Officials (AASHTO) Design Subcommittee, June 13, 2002, Savannah, Georgia;
- ANPRM presentation and open forum at the 2002 annual meeting of the AASHTO Subcommittee on Traffic Engineering annual meeting, June 17, 2002, Minneapolis, Minnesota;
- ANPRM presentation and open forum at the 2002 annual meeting of the AASHTO Maintenance Subcommittee, July 17, 2002, Mobile, Alabama;
- ANPRM presentation and open forum at the 2002 annual meeting of the AASHTO Subcommittee on Construction, August 6, 2002, Rehoboth Beach, Delaware;
- ANPRM public meeting at Chevy Chase, Maryland, September 19, 2002;
- ANPRM outreach meeting with North Carolina DOT, September 24, 2002; and
- ANPRM public meeting at Chevy Chase, Maryland, September 25, 2002.

Given today's issues and the feedback obtained from the ANPRM and continued outreach with the transportation community, the FHWA believes that it is in the Nation's best interest to amend the regulation to recognize the need to comprehensively consider work zone safety and mobility. Through this NPRM the FHWA seeks to embed full consideration of the safety and mobility impacts of work zones into the project development process, and provide for worker safety and efficient construction. The proposed changes seek to bring about such consideration in a manner that provides flexibility to States to apply the regulations to their unique operating environments, their policies and procedures, and individual project requirements.

**Overview of the ANPRM**

In the ANPRM, the FHWA identified a broad range of work zone issues that apply to planning, designing, and implementing Federal-aid highway projects. The issues posed in the ANPRM correspond to an over-arching theme that aims to reduce the need for recurrent roadwork, the duration of work zones, and the disruption caused by work zones. These issues were posed as questions to elicit comments, guidance, and suggestions. The ANPRM indicated that in order to adequately meet the safety and mobility expectations of our customers (road users, workers, and all other affected properties), changes may be required to the project development process to fundamentally include consideration of the safety and mobility impacts of work zones, while providing for worker safety and efficient construction. Such a customer-oriented approach necessitates examination of the complete project development cycle. Therefore, the questions in the ANPRM were grouped into categories that generally correspond to the major steps in project development. These categories are:

- General (wide-ranging policy and regulatory considerations);
- Transportation Planning and Programming;
- Project Design for Construction and Maintenance;
- Managing for Mobility and Safety In and Around Work Zones;
- Public Outreach and Communications; and
- Analyzing Work Zone Performance.

Commenters were also encouraged to include discussion of any other issues they considered relevant to this effort.

**Discussion of Comments and Responses to ANPRM**

The following discussion summarizes the comments received on the ANPRM and the subsequent outreach efforts conducted by the FHWA. The FHWA's responses to these comments and the proposed actions are also provided. The discussion provides a general sense of the issues addressed in the comments.

The ANPRM and associated documents are available in the docket at *http://dms.dot.gov*, under Docket No. 2001–11130. To better understand the summary of the ANPRM comments, reviewers are encouraged to download a copy of the ANPRM from the docket.

We received 84 responses to the docket. Of these, 67 provided responses to the specific questions raised in the ANPRM, while the remaining 17 provided a set of general comments only.

The general comments provided by the 17 respondents who did not answer the specific questions in the ANPRM were not directly attributable to any of the specific issues raised in the ANPRM—however, their comments were synthesized and summarized to provide a general understanding of their position on work zone safety and mobility issues.

The 67 respondents who provided comments on the specific questions raised in the NPRM provided both direct and indirect responses that indicated whether or not they were in support of a particular issue. A direct response constituted a definite ''Yes'' or ''No'' type response from the respondent, while an indirect response constituted a verbatim response to the question, which was then analyzed and interpreted as to what the respondent's position was. In cases where the respondent's position was not interpretable whether he/she was in support of an issue, we indicated that the respondent's position was unclear. Also, not all respondents answered all the questions in the ANPRM, which were indicated as ''no response'' in the summary of ANPRM comments.

The ANPRM comments analysis shows percentages of responses across several categories, for example, Yes—60 percent, No—20 percent, No Response—10 percent, Unclear—10 percent. The purpose of presenting the ANPRM responses along the lines of percentages is not to assign statistical significance to the responses, but to present a general cross-section of the responses and also to present a general idea of the respondents' position on different issues.

The percentages showing the profile of ANPRM respondents are based on all the responses (84), while the percentages showing the break-up of respondents' position on different issues is based on the 67 respondents who provided comments on the specific questions in the ANPRM.

About 70 percent of the respondents were from the public sector or represent public sector interests, 18 percent of the respondents were from the private sector or catered to private sector interests, 6 percent of the respondents represented both public and private sector interests, while the remaining 6 percent did not indicate their affiliation.

The break-up of the agency types of the different respondents present the following statistics. About 65 percent of the respondents belonged to Departments of Transportation (DOTs) (either State or local), 2 percent of the respondents represented private sector equipment/technology providers; 5 percent of the respondents belonged to other public agencies (Federal and other State agencies); 6 percent of the respondents were either private individuals or consultants or contractors; 15 percent of the respondents represented trade associations and special interest groups, including the American Traffic Safety Services Association (ATSSA), the American Road Transportation Builders Association (ARTBA) and the Associated General Contractors (AGC) of America; and 6 percent of the respondents did not indicate their agency affiliations.

The AASHTO compiled the ANPRM questions into a survey and distributed it amongst its member agencies. Several State DOTs provided their responses through AASHTO's survey, while others submitted their comments individually. AASHTO, as an agency, did not provide specific comments on the ANPRM, but stated its general position on work zone safety and mobility based on the responses from its member agencies. AASHTO indicated general agreement amongst its respondents on the need to have a National policy to improve safety and mobility in highway construction and maintenance, and that the policy should be issued in the form of guidance.

It was also noticeable that a majority of the respondents' primary job function involved either traffic, engineering, safety or design. There was very little participation from the planning community, contractors, and law enforcement personnel.

*ANPRM ''General'' Section—Comments Summary*

The ''General'' section in the ANPRM addressed wide-ranging policy and regulatory considerations regarding work zone safety and mobility. The ANPRM stated that the FHWA was considering a wide range of options, including revising and expanding the regulations in 23 CFR part 630, subpart J, and that, alternatively, the FHWA was also considering policy guidance. This section was therefore primarily aimed at identifying whether or not the FHWA should advocate a new National policy on work zone safety and mobility, and whether the policy should be advocated through regulation or through policy guidance.

When asked if there should be a National policy to promote improved safety and mobility in work zones, 81 percent of the respondents who commented on specific questions in the ANPRM, said yes; 16 percent said no; and about 3 percent did not respond. Of the respondents who said yes, 76 percent belonged to DOTs, 2 percent were from other public agencies, 4 percent represented private agencies, 13 percent were from trade associations, and 6 percent did not indicate their agency affiliation. When asked if the National policy (if it were to be developed), should be issued as regulation or in the form of best practices and guidance, 64 percent of the respondents who commented on specific questions in the ANPRM said that the policy should be advocated through guidance and best practices; 18 percent said that the policy should be advocated through regulation; about 4 percent of the responses were unclear; while 14 percent did not respond.

Of the respondents who indicated that the policy should be advocated through guidance and best practices, 90 percent belonged to DOTs, 2 percent represented other public agencies, 5 percent belonged to trade associations, and 2 percent did not indicate their agency affiliation. Further, a few respondents (about 16 percent of respondents who provided comments on specific ANPRM questions) indicated that there need not be a new policy. Instead, they suggested that existing

regulations and guidelines need to be enforced better. In general, respondents also acknowledged that mobility considerations should be incorporated in planning, designing and implementing work zones.

When queried about the adequacy of the current regulations, about 40 percent of respondents who provided comments on specific questions in the ANPRM indicated that the current regulations are not adequate for addressing work zone safety and mobility concerns at all stages of project evolution; while 34 percent indicated that the current regulations are adequate. The remaining respondents who commented on specific questions in the ANPRM did not provide information that led to any conclusive inference as to whether the current regulations are adequate or not. Of the respondents who indicated that the current regulations are not adequate, 56 percent belonged to DOTs, 4 percent represented other public agencies, 7 percent were from private agencies, 30 percent belonged to trade associations, and 4 percent did not indicate their agency affiliations. All the respondents who stated that the current regulations are adequate belonged to DOTs.

In response to the need for stratifying work zone regulations according to varying levels and durations of risk to road users and workers, and disruptions to traffic, about 76 percent of respondents who provided comments on specific ANPRM questions recommended that work zone regulations should be stratified. Of these, 75 percent belonged to DOTs, 4 percent were from private agencies, 16 percent represented trade associations, and 6 percent did not indicate their agency affiliations. The different stratification factors that were presented in the ANPRM included: duration, length, lanes affected, Average Daily Traffic (ADT), road classification, expected capacity reduction, potential impacts on local network and businesses. Out of these factors, ADT, road classification and expected impacts /capacity reduction were often referred to as the most appropriate stratification factors. However, while it was evident that regulations should be stratified, several respondents also indicated that it may be cumbersome to implement such stratification, and it may lead to confusion in interpretation of regulations.

Currently there are four different definitions of the term ''work zone'', as stated in the Manual on Uniform Traffic Control Devices (MUTCD), the National Committee on Uniform Traffic Laws and Ordinances (NCUTLO), the National Highway Traffic Safety Administration (NHTSA), and by the American National Standards Institute (ANSI) (proposed).

The MUTCD defines a work zone as an area of a highway with construction, maintenance, or utility work activities, and that it is typically marked by signs, channelizing devices, barriers, pavement markings, and/or work vehicles. The MUTCD also states that a work zone extends from the first warning sign or rotating/strobe lights on a vehicle to the END ROAD WORK sign or the last temporary traffic control device.

The NCUTLO adds to this definition by stating that a work zone may be for short or long durations, and may include stationary or moving activities. The NCUTLO also provides examples for the different types of work zones, and indicates that the work zone does not include private construction, maintenance or utility work outside the highway.

The NHTSA definition for work zone is very similar to that of the MUTCD, the difference being that NHTSA indicates work zones may or may not involve workers or equipment on or near the road, and that work zones may be stationary or moving, and short term or long term in nature.

The ANSI, in its Manual on Classification of Motor Vehicle Traffic Accidents, American National Standard—ANSI D–16, is proposing a definition for work zone, which is similar to the NCUTLO definition.

The ANPRM inquired whether there ought to be a common National definition for the term ''work zone.'' About 84 percent of the respondents who provided comments on the specific questions in the ANPRM indicated that there should be a common National definition for ''work zone.'' Of these, 77 percent belonged to DOTs, 2 percent were from other public agencies, 2 percent belonged to private agencies, 14 percent represented trade associations, and 5 percent did not indicate their agency affiliations. In response to specific language for a common national definition, a majority of the respondents suggested adopting either the MUTCD or the ANSI definition. Several respondents mentioned that adopting a common National definition for work zone will enhance and standardize work zone data collection and crash reporting processes.

*ANPRM ''General'' Section—FHWA Response and Proposed Action*

The ANPRM comments indicate strong support for the development of a National policy on work zone safety and mobility and document the need to amend FHWA's current regulations in 23 CFR part 630 subpart J to address both safety and mobility issues associated with work zones. The respondents indicated that the preferred method for FHWA to advocate the regulation is by establishing a broad policy, supported by detailed guidelines for implementation. The FHWA therefore proposes to amend its regulation in 23 CFR part 630 subpart J to include the consideration of work zone mobility in addition to safety.

The proposed amendments would result in a broad regulation that addresses a wide range of issues, and provide implementation flexibility to States in meeting their individual program goals and needs. Therefore, the proposed amendments to the regulation recognize the need for stratification, and provide flexibility to States in applying the provisions of the regulation to different projects, based upon their respective program goals and their understanding of the needs and work zone impacts of individual projects.

With regard to the issue of a common National definition for work zone, the ANPRM comments indicate the need for a common National definition for work zone. However, the FHWA realizes that the four different definitions for work zone are essentially similar in content and implication. Therefore, for the purposes of this regulation, we propose to incorporate the MUTCD definition for work zone. Further, one of the reasons the FHWA raised the issue of a common National definition for the term ''work zone,'' was to gauge public opinion on whether there is any recognition that the impacts of work zones may not always be restricted to the work zone itself, and that the impacts may be felt in the advance area of the work zone, other roadway corridors, the regional transportation network and on other modes of transportation. This concept of broader impacts of work zones is however addressed in the proposed amendments by incorporating it into the definition of ''work zone impacts,'' rather than incorporating it in the definition of work zone itself.

The definition and explanation for the phrase ''work zone impacts'' is available in the section-by-section discussion of this NPRM and the ''Definitions and explanation of terms'' section of the proposed regulation language.

*ANPRM ''Transportation Planning and Programming'' Section—Comments Summary*

The purpose of the Transportation Planning and Programming section was to identify whether the road user safety and mobility impacts of work zones, and work zone safety requirements are

considered in Statewide, metropolitan and corridor transportation planning and programming. Further, it also endeavored to assess the feasibility of incorporating such considerations in transportation planning and programming.

When asked if road user impacts of work zones are considered in transportation planning and programming, about 24 percent of respondents who provided comments on specific questions in the ANPRM indicated that user-impacts are not currently considered in transportation planning; 9 percent did not respond; 18 percent of the responses were unclear; while 49 percent indicated that user impacts are indeed considered in transportation planning. Even though 49 percent of the respondents said yes, many interpreted the question as addressing early project-level planning verses the transportation planning processes that develop long-range and short-term transportation plans (LRTP's and TIP's). Therefore, there is a significant amount of ambiguity in the responses to this question.

When asked if work zone impacts should be considered in metropolitan, statewide and corridor level transportation planning, on average, about 30 percent of the respondents who provided comments on specific questions in the ANPRM said yes to metropolitan and statewide planning, while 25 percent said no. Of the respondents who indicated that work zone impacts should be considered in metropolitan planning, 74 percent belonged to DOTs, 4 percent were from private agencies, 13 percent represented trade associations, and 9 percent did not indicate their agency affiliations. Of the respondents who indicated that work zone impacts should be considered in statewide planning, 86 percent belonged to DOTs, 5 percent were from private agencies, 5 percent represented trade associations, and 5 percent did not indicate their agency affiliations. On the other hand, a slightly higher number of respondents who provided comments on specific questions in the ANPRM, 48 percent, indicated that work zone impacts should be considered in corridor planning, while only 9 percent said no. It is noticeable that about 40 percent of the respondents who provided comments on specific questions in the ANPRM did not respond to any of these issues, which indicates the level of ambiguity in the responses.

There were mixed responses to the adoption of crosscutting policy level considerations to account for the safety and mobility impacts of work zones in transportation planning and programming. Examples of such crosscutting policy-level considerations include the use of more durable materials, life-cycle costing, complete closure of facilities, information sharing on utilities, etc. The purpose of adopting policies on such cross-cutting issues is to facilitate a streamlined approach to incorporate work zone considerations into transportation planning and programming, and to serve as decisionmaking tools that help make better decisions to mitigate the impacts of work zones, while planning, programming, designing, and implementing projects. Most respondents did not interpret the question appropriately, leading to several responses that did not address this issue directly.

*ANPRM ''Transportation Planning and Programming'' Section—FHWA Response and Proposed Action*

The provisions in the proposed amendments do not have a direct effect on the transportation planning processes (*i.e.*, LRTP and TIP) that consider and develop transportation plans at a regional or metropolitan level. The responses to the questions in the transportation planning and programming section were ambiguous, with several respondents either choosing not to answer the questions or misinterpreting the questions as addressing early project-level planning verses the transportation planning processes that develop long-range and short-term transportation plans (LRTP's and TIP's). Further, 23 CFR part 630 subpart J falls under the ''Engineering and Traffic Operations'' area, and does not exercise authority over the ''Planning and Research'' areas.

The proposed changes do not have any implications on the transportation planning processes that develop LRTP's and TIP's. However, based on current industry trends and needs and on ongoing research, the FHWA believes that it is important to consider the impacts of work zones while developing transportation plans by accounting for these impacts at the regional, network and corridor levels, and suitably coordinating projects so as to minimize these impacts. Certain State DOTs, for instance, the California Department of Transportation (Caltrans), consider the impacts of work zones at the systems planning level by evaluating the feasibility of the implementation of multiple projects in their respective districts. The FHWA intends to conduct further research and outreach to better understand how work zone impacts can be incorporated in the transportation planning and programming processes, and to further develop the necessary tools and guidelines that will help States implement such consideration.

*ANPRM ''Project Design for Construction and Maintenance'' Section—Comments Summary*

The purpose of the Project Design for Construction and Maintenance section in the ANPRM was to identify strategies and practices to make better decisions on alternative project designs that may lead to reductions in the need for recurrent road construction and maintenance work, the duration of work zones and the disruption caused by work zones. Examples of such considerations include life-cycle cost analysis, alternative project scheduling and design strategies, such as, full road closures and night time work, using more durable materials, coordinating road construction, estimation of user costs/impacts, risk and reward sharing with contractors, and constructability reviews for projects.

The ANPRM queried the public on how the FHWA can encourage considerations in project design and decisionmaking that may lead to reductions in the need for recurrent road work, the duration of work zones and the impacts of work zones. Examples of such considerations include life-cycle cost analysis; alternative project scheduling and design strategies, such as, full road closures and night time work; using more durable materials; coordinating road construction; estimation of user costs/impacts; risk and reward sharing with contractors; and constructability reviews for projects. The following is a summary of suggested methods for FHWA to facilitate these considerations [10]:

- Several respondents suggested that FHWA develop procedures and practices and provide guidelines for States to be able to incorporate such considerations. A few respondents referred to the ''Work Zone Best Practices Guide'' as a good starting point.
- A few respondents (primarily State DOT's and a few trade associations) suggested that the FHWA provide funding incentives for States that adopt such practices.

[10] We do not indicate percentages for this ANPRM question as it was primarily a qualitative question that asked for suggestions on methods to best incorporate considerations in project design to reduce recurrent road work, the duration of work zones and the impacts of work zones. What is presented is a summary of the most popular suggestions and often repeated suggestions from the respondents.

• Very few respondents suggested mandatory requirements in this regard.

• Some of the respondents suggested regulations on use of life-cycle costing to make policy-level decisions on choice of highway material.

When asked if ''user-cost'' could be a useful factor in decisionmaking for alternative project designs, about 10 percent of the respondents who provided comments on specific questions in the ANPRM said no; 10 percent did not respond; 1 percent of the responses were unclear; while an overwhelming majority of 79 percent said yes. Of the respondents that said yes, 85 percent belonged to DOTs, 4 percent were from private agencies, 10 percent represented trade associations, and 2 percent did not indicate their agency affiliations. When asked if analytical tools should be used for the evaluation of various work zone design alternatives and their estimated impacts, 1 percent said no; 39 percent did not respond; 18 percent of the responses were unclear; while 42 percent said yes. Of the respondents that said yes, 79 percent belonged to DOTs, 3 percent were from private agencies, 14 percent represented trade associations, and 3 percent did not indicate their agency affiliations.

When asked whether utility delays have been cited as obstacles to efficient project delivery, several respondents said yes; while a smaller number said no. Several suggestions were made on how best to address utility delays in project design.

*ANPRM ''Project Design for Construction and Maintenance'' Section—FHWA Response and Proposed Action*

The ANPRM comments led the FHWA to conclude that the respondents acknowledge the need to account for work zone impacts of projects and the associated costs to the public; and to consider alternative strategies in project design and decisionmaking such as, choice of longer-lasting materials, complete road-closures, work during night-time and off-peak hours, innovative contracting techniques, and utility coordination. It is also clear that the respondents prefer guidance in this regard rather than regulation, and that very restrictive regulations may affect innovation and creativity in the development of work zone impact mitigation strategies. Therefore, the FHWA proposes to amend the current regulation by introducing a new section on work zone impacts analysis that will govern decisionmaking on project design strategies and work zone impacts mitigation alternatives. These proposed amendments provide flexibility to States in scaling the level of detail required for the impacts analysis and evaluation of alternative project options according to the unique characteristics of each project and their respective program goals.

*ANPRM ''Managing for Mobility and Safety In and Around Work Zones'' Section—Comments Summary*

Technology is constantly evolving and there are many methods that can be applied to managing traffic in and around work zones. The application of Intelligent Transportation Systems (ITS) for purposes, such as, traffic management, automated enforcement, and traveler information is a useful method to improve transportation safety and mobility. The current and future safety and mobility challenges presented by work zones may require Traffic Control Plans (TCPs) to include traffic management, enforcement and operations considerations (such as ITS based traffic control and traveler information, speed management and enforcement, incident and emergency management, *etc.*), security considerations, and other considerations (for example, utility location and coordination information). The purpose of the managing for mobility and safety section was therefore to identify the need for expanding the content of TCPs and to outline improved methods and strategies to manage, operate, and enforce work zones.

In general, several respondents indicated the need for comprehensive traffic mitigation planning for work zones across all stages of project development and delivery that would reduce the safety and mobility impacts of work zones, by incorporating appropriate mitigation strategies.

About 70 percent of the respondents who commented on specific questions in the ANPRM indicated that the scope of TCPs should be expanded to consider sustained traffic management, operations and enforcement; about 12 percent said no; 12 percent did not respond; while 6 percent of the responses were unclear. Of the respondents that stated that the scope of TCPs should be expanded, 77 percent belonged to DOTs, 2 percent were from other public agencies, 4 percent were from private agencies, 15 percent represented trade associations, and 2 percent did not indicate their agency affiliations. Based on the general preference of the respondents to the ANPRM, and on subsequent outreach sessions conducted by the FHWA, it is evident that the scope of TCPs should be expanded to account for sustained traffic management, operations and enforcement for some projects.

With respect to the deployment of uniformed police officers in work zones, it was evident from the ANPRM comments that several States have increasingly been deploying uniformed police officers on roadway construction projects. Respondents indicated that these practices are successful in increasing motorist compliance, regulating work zone travel speeds, and in reducing crashes.

When asked if TCPs should consider the security aspects of the construction of critical transportation infrastructure, about 30 percent of the respondents who commented on specific questions in the ANPRM said no; 15 percent did not respond; 9 percent of the responses were unclear; while 46 percent said yes. Further, when asked if TCPs should consider the security aspects of work zone activity in the vicinity of critical transportation or other critical infrastructure, 33 percent of the respondents said no; 13 percent did not respond; 6 percent of the responses were unclear; while 48 percent said yes. Several respondents commented that TCP's may not be the most appropriate vehicles for security considerations. Security considerations, where applicable, need to be addressed to the extent possible in other comprehensive security planning efforts. Such security plans should involve work zone considerations. At the same time, many respondents also indicated that emergency-related traffic management implications do apply to work zones, *e.g.*, keeping work zone lanes open during emergency evacuations such as hurricanes, and other natural or man-made disasters.

When asked if more flexibility should be allowed in the development of TCPs, 30 percent of the respondents who commented on specific questions in the ANPRM said no; about 25 percent did not respond; 7 percent of the responses were unclear; while 37 percent said yes. Of the respondents that said yes, 80 percent belonged to DOTs, 4 percent were from other public agencies, 8 percent represented trade associations, and 8 percent did not indicate their agency affiliations. While a significant percentage of the respondents said ''no''—they qualified their assertion by stating that flexibility should be allowed in terms of allowing participation from law enforcement, public, and contractors in TCP development, but it should ultimately be the project owner—State DOT or other transportation agency who should develop and approve TCPs. Further, it may be noted that § 630.1010(a)(4) of the

current regulation states the following with regards to flexibility in TCP development: ''Provisions may be made to permit contractors to develop their own TCP's and use them if the State and FHWA find that these plans are as good as or better than those provided in the plans, specifications, and estimates (P.S. & E.).'' The current regulation also requires a responsible person from the State, at the project level, to ensure that the TCP and other safety aspects of the contract are effectively administered. Representatives of the contracting industry have also indicated that they are reluctant to develop their own TCPs primarily because of liability concerns, and because there is an impression that contractors may do this by cost-cutting at the risk of safety.

When asked if certification should be required for TCP developers, about 34 percent of the respondents indicated no; 27 percent did not respond; about 5 percent of the responses were unclear; while 34 percent said yes. All respondents who said no were from DOTs. Of the respondents that indicated yes, 78 percent belonged to DOTs, 17 percent represented trade associations, and 4 percent did not indicate their agency affiliations. Most States currently require TCPs to be signed and sealed by licensed Professional Engineers (P.E.). A few respondents recommended that all TCP developers be certified, or have undergone the Traffic Control Supervisor (TCS) training. Some respondents suggested the use of ''pre-qualified'' designers and contractors for the development of TCPs, to avoid the possibility of unsafe or inadequate TCPs. The regulation currently states that all persons responsible for the development, design, implementation, and inspection of traffic control shall be adequately trained.

When asked how TCPs should address considerations that are required by the Americans with Disabilities Act (ADA) (Pub. L. 101–336, July 26, 1990, 104 Stat 327, as amended), several respondents reasserted that TCPs should include ADA considerations [11] for urban projects with pedestrian and other urban issues. They recommended several ways for including ADA considerations in TCPs. Also, several respondents indicated that TCPs should address ADA considerations only when ADA considerations are already being met by the job-site (prior to deployment of the work zone).

When asked if mobility and safety audits should be required for work zones, 28 percent of the respondents who commented on specific questions in the ANPRM said no; about 13 percent did not respond; 3 percent of the responses were unclear; while 55 percent of the respondents said yes. About 95 percent of the respondents who said no belonged to DOTs. Of the respondents who said yes, 81 percent belonged to DOTs, 3 percent were from private agencies, 14 percent represented trade associations, and 3 percent did not indicate their agency affiliations. The current regulation mentions the need for training for personnel responsible for traffic control inspection, but there are no statements that require work zone safety inspections or mobility/safety audits. Several States have policies that require work zone traffic control and safety inspections to be performed by their construction and safety inspectors.

*ANPRM ''Managing for Mobility and Safety In and Around Work Zones'' Section—FHWA Response and Proposed Action*

The responses to this section indicate strong support for expanding TCPs to address sustained traffic management, operations and safety to help mitigate the impacts of work zones. Sustained transportation management and operations strategies include transportation systems management, ITS, traveler information, incident management, procedures for work zone operations during emergencies, and conduct of mobility audits. Additional considerations include transportation operational safety considerations such as enforcement in work zones, speed monitoring and management, and conduct of safety audits.

The proposed amendments therefore include provisions that facilitate the consideration of transportation management and operations components that address sustained management, operations and safety. These amendments include provisions for flexibility in decisionmaking on the need for such strategies, and their scope and level of detail, based upon individual project requirements and work zone impacts. As suggested by the ANPRM comments, the proposed changes would provide for flexibility as to who develops the TCP and the transportation management and operations strategies, with ultimate responsibility belonging to the State.

The issue of certification for TCP developers and/or other personnel responsible for design, development and implementation of work zone safety and mobility requirements was addressed by proposing to include provisions in the regulation that require training for State personnel involved in work zone related decision making, with provisions that allow for flexibility in implementation commensurate with the State's needs.

Since security aspects of construction related to critical infrastructure are best addressed in other comprehensive security planning efforts, the proposed changes do not address this issue. With regard to ADA considerations for work zones, we propose language that refers to the appropriate sections of the Code of Federal Regulations (CFR) that address Federal ADA compliance.

*ANPRM ''Public Outreach and Communications'' Section—Comments Summary*

To reduce the anxiety and frustration of the public, it is important to sustain effective communications and outreach with the public regarding road construction and maintenance activity, and the potential impacts of these activities. This also increases the public's awareness of such activities and their impacts on their lives. The lack of information is often cited as a key cause of frustration for the traveling public. Therefore, this section of the ANPRM attempted to identify the key issues that need to be considered from a public outreach and information perspective.

An overwhelming majority of the respondents were supportive of reaching out to the public and keeping them informed about planned and ongoing construction and maintenance activities. When asked if projects with substantial disruption should include a public communications plan, 10 percent of the respondents who commented on specific questions in the ANPRM said no; 9 percent did not respond, while 81 percent indicated yes. Of the respondents who indicated yes, 81 percent were from DOTs, 2 percent belonged to private agencies, 13 percent represented trade associations, and 4 percent did not indicate their agency affiliation. Several States have recognized the need for communicating with the public, both on an ongoing basis, and for specific projects, and have been using various communications techniques and media sources for getting the word out.

[11] The U.S. Access Board, the Federal agency charged with developing accessibility guidelines for buildings and facilities under the ADA and other statutes, is currently completing work on proposed guidelines for sidewalks, street crossings, and related pedestrian facilities in the public right-of-way that will include accessibility provisions for work zones that are on or along pedestrian routes. Draft proposed guidelines for public rights-of-way accessibility were posted to the Board's Web site at *www.access-board.gov* in June 2002.

*ANPRM ''Public Outreach and Communications'' Section—FHWA Response and Proposed Action*

There is strong support for public outreach and communications with regard to work zones, and several transportation agencies are already undertaking concerted efforts to better inform the public about the safety and mobility aspects and impacts of work zones. The proposed changes to the regulation therefore facilitate the consideration of public information and outreach strategies as part of the work zone impacts mitigation mechanisms; with flexibility for States in the choice of the different strategies and their scope and level of detail, based upon individual project requirements and work zone impacts.

*ANPRM ''Work Zone Performance Monitoring and Reporting''—Comments Summary*

Evaluation is a necessary tool for analyzing failures and identifying successes in work zone operations. Work zone performance monitoring and reporting at a nationwide level has the potential to increase the knowledge base on work zones and help better plan, design and implement road construction and maintenance projects. The purpose of this section in the ANPRM was to identify the adequacy and appropriateness of the current data reporting, and the need for enhanced and increased reporting of data on work zones by States. The following data issues were addressed: work zone characteristics, work zone mobility performance, and work zone safety performance.

When asked if States should report information on work zone characteristics, about 46 percent of the respondents who commented on specific questions in the ANPRM said no; 12 percent did not respond; 12 percent of the responses were unclear; while 30 percent said yes. Of the respondents that said no, 91 percent belonged to DOTs. Of the respondents that said yes, 70 percent belonged to DOTs.

When asked if States should report information on work zone mobility performance, 40 percent said no; 21 percent did not respond; 1 percent of the responses were unclear; while 37 percent said yes. Of the respondents who said no, 89 percent belonged to DOTs. Of the respondents who said yes, 72 percent belonged to DOTs.

When asked if the current work zone safety data collection methods and efforts are adequate and appropriate, 36 percent said no; 28 percent did not respond; 3 percent of the responses were unclear; while 33 percent of the respondents said yes. Of the respondents who said no, 72 percent belonged to DOTs. Of the respondents who said yes, 95 percent belonged to DOTs. Most of the respondents indicated that the mobility measures mentioned in the ANPRM were appropriate, and that the currently used safety measures are appropriate as well. Several respondents indicated that although reporting information on work zone characteristics, mobility performance and safety performance would be useful, they cautioned against requiring unwieldy data collection by States that are already strapped for cash and personnel. A fair number of respondents also indicated the need for more standardized crash reporting policies and procedures.

*ANPRM ''Work Zone Performance Monitoring and Reporting'' Section—FHWA Response and Proposed Action*

While establishing the benefits of data collection and reporting on the safety and mobility performance of work zones, the ANPRM comments are mixed with respect to regulations that mandate such data collection and reporting. The current provisions in the regulation require States to analyze crashes and crash data to correct deficiencies on individual projects and improve the content of future TCPs. We propose to retain this provision, with the option to include other safety performance measures (*e.g.*, speed variance) as appropriate. Since performance monitoring serves as a basis for process and content improvement in work zone impacts mitigation, we propose to add a new provision that encourages States to analyze work zone mobility data. There are no proposed requirements on the type of analysis or the actual mobility parameters that should be analyzed.

**General Discussion of the Proposal**

*Summary of ANPRM Resolution and Areas Receiving Strong Support*

The following is a summary of the areas that are strongly supported by respondents to the ANPRM:

- There is support for a National policy on work zones that explicitly addresses both safety and mobility. The policy should be broad and address a wide range of issues. The FHWA should support the policy by providing appropriate guidance to States. There needs to be flexibility in the implementation of regulations, thereby enabling creativity and innovation in work zone impacts mitigation.
- The policy should stratify work zone regulations and allow flexibility to States in applying the regulations appropriately to individual projects, based on the State's program goals and the work zone impacts of the project.
- Work zone considerations should be mainstreamed and institutionalized in State procedures.
- Comprehensive work zone impacts mitigation plans should be developed. These plans should consider the work zone safety and mobility impacts of projects early in project level planning, and progress through the later stages of project development. Alternative project options including design, procurement and construction strategies that minimize these impacts should be developed and evaluated. We get strong validation that the costs borne by users as a result of the impacts of work zones could be a useful factor in decisionmaking for evaluating alternative project designs. Work zone induced user-costs are derivatives of the safety and mobility impacts of work zones. Therefore, as part of considering work zone safety and mobility in project development, there needs to be an analysis of the impacts of work zones, which will then lead to development and evaluation of alternative project designs and mitigation strategies. States should however have the flexibility to scale their work zone impacts analysis and evaluation of alternative project options and mitigation strategies, based on the severity of anticipated work zone impacts due to individual projects.
- The scope of TCPs should be expanded to address sustained traffic management and operations considerations. There needs to be flexibility for States in enlisting participation from law enforcement, the public and contractors in developing TCPs, but ultimate responsibility for the project should lie within the State.

The FHWA believes that the increasing pressures for work zone safety and mobility, growth of reconstruction, and the concern voiced by road users require reconsideration of how we plan, design and construct roadway projects to focus on highway and worker safety, as well as meet the mobility needs of our customers. Therefore, the purpose of the proposed regulation is to:

- Reduce the safety and mobility impacts of highway work zones on road users, workers, businesses, and society, and maximize the availability of the roadway for efficient traffic movement while ensuring worker safety and efficient construction.
- Enhance the way construction projects are currently conceived,

planned, designed, and executed to more fully consider work zone impacts on road users, workers, and other affected parties.

*Summary of Proposed Changes*

We propose changing the title of 23 CFR part 630 subpart J to ''Work Zone Safety and Mobility'' to more accurately represent the impacts of work zones on the public. To this end, we propose to update the ''Purpose'' and ''Policy'' sections of the current regulation to emphasize the consideration of both the safety and mobility of work zones. We also propose to amend and relocate some of the language that is currently in the ''Background'' section to the ''Purpose'' section. The ''Background'' section of the current regulation contains a reference to the MUTCD, and its purpose and applicability. We propose to amend this reference to the MUTCD and include it in a new section entitled, ''References''.

The current regulation indicates that its purpose is to assure that adequate consideration is given to all motorists, pedestrians, and construction workers on all Federal-aid construction projects. We propose language in this section to indicate that work zones have impacts on bicyclists, and persons with disabilities, in addition to motorists, pedestrians and workers. We propose to introduce the term ''road users,'' which encompasses motorists, pedestrians, bicyclists, and persons with disabilities. We also propose language to indicate that work zones impact other parties in addition to road users and workers. We therefore propose to introduce the phrase ''other affected parties,'' which may include public facilities like parks, recreational facilities, fire stations, police stations, and hospitals, and private parties such as businesses and residences.

Further, in the ''Purpose'' section we propose to provide a brief synopsis of the safety and mobility impacts that work zones have on road users, workers and other affected parties. We also propose to indicate that these safety and mobility impacts of work zones are exacerbated by growing congestion in many locations, and that addressing these issues requires considerations that start early in project development and continue through project completion.

The ''Background'' section of the current regulation recognizes the importance of traffic control for work zone safety, and presents the MUTCD as a guide that provides basic principles and standards for the design and application of traffic control devices. We propose to amend this reference to the MUTCD and include it in a new section entitled, ''References''. We propose to retain the current language that refers to the MUTCD as a guide for traffic control, but augment it with language that recognizes that there are considerations in addition to traffic control that are required to comprehensively address the safety and mobility impacts of work zones.

We propose to add a new section entitled, ''Definitions/Explanation of Terms'' to explain the meaning and implications of certain terms that are key to understanding and interpretation of the proposed provisions in the regulation. The inclusion of this proposed new section results in a change in the section numbering scheme.

We propose minor changes to the current section on ''Implementation'' to clearly indicate the responsibilities of States and those of the FHWA Division Administrators, and to convey that States and their respective FHWA Divisions are encouraged to work together to ensure conformance with, and implementation of the requirements of this proposed regulation.

We propose reorganizing the requirements that are currently under the ''Contents of the Agency's Procedures'' into a new section entitled, ''State Transportation Department Policy and Procedures.'' The purpose of this reorganization is to clearly delineate policy level and project level requirements. The major proposed changes to the regulation are located in this section. Most of the proposed changes are developed around the consideration and analysis of the work zone safety and mobility impacts of projects, and the development of mitigation measures that are contained within a Transportation Management Plan (TMP) for projects.

The section on ''State Transportation Department Policy'' consists of proposed requirements that specify the following: development of a ''Work Zone Safety and Mobility Policy'; provision of work zone related ''Training'' to personnel; conduct of ''Process Review and Evaluation'; and collection and analysis of ''Work Zone Performance Data.''

The proposed requirement for the development of a ''Work Zone Safety and Mobility Policy'' is new. We propose that States develop their own ''work zone safety and mobility policies'' that will support the systematic consideration of work zone impacts across all stages of project development; and address the safety and mobility needs of all road users, workers, and other affected parties on all Federal aid highway projects.

The proposed requirements on ''Training'' are part of the current regulation with proposed changes that encourage documentation of the training provided, and the provision of periodic training updates to appropriate personnel.

The ''Process Review and Evaluation'' requirements are in the current regulation, and we propose to modify the requirements to provide flexibility to States with regard to the conduct of the reviews, and the frequency and the type of reviews. We also propose to encourage States to address these reviews in their respective stewardship agreements with the FHWA Divisions.

We propose to remove the language on work zone crash data collection and analysis from the current ''Process Review and Evaluation'' section, and include it in a new paragraph entitled, ''Work Zone Performance Data.'' In this paragraph we propose changes that encourage the collection and analysis of work zone mobility performance data in addition to crash data.

In the project level requirements we propose a section that outlines systematic ''Project Impact Analysis and Management Procedures'' to include the following: conduct of ''Work Zone Impacts Analysis'; development of a ''Transportation Management Plan (TMP)''; development of provisions for ''Pay Items'' for work zone traffic control and management; and assignment of ''Responsible Persons'' for projects.

We propose a new section on Work Zone Impacts Analysis. It proposes to require an analysis of work zone impacts for projects, and provides flexibility to States in scaling the level of detail of the analysis based on the anticipated work zone impacts of individual projects. It also proposes that if States determine that a project is anticipated to have minimal sustained work zone impacts, they may exempt the project from the impacts analysis.

The TMP would be a new requirement and would include updated requirements on the Traffic Control Plan (TCP). We propose to delete the current language on TCP requirements for two-lane/two-way operations on highways as they are available in the MUTCD. In addition to the TCP, the TMP may consist of a Transportation Operations Plan (TOP), and a Public Information and Outreach Plan (PIOP). The proposed requirements indicate that TMPs are required for all projects, but the TCP is the only mandatory component of TMPs. The need for the other two components of the TMP, namely the TOP and the PIOP, is dependent upon the State's policy

requirements and the severity of work zone impacts due to the project.

The ''Pay Items'' paragraph is an existing requirement with proposed changes that would allow both method based and performance based specifications for procurement. The ''Responsible Persons'' paragraph is an existing requirement with proposed changes that would require a responsible person for projects from the contractor in addition to the responsible person from the State.

By incorporating the proposed changes in 23 CFR 630 part subpart J, the FHWA intends to facilitate creative thinking and innovation by the States to mainstream work zone safety and mobility considerations in their policies and procedures, and in their normal project development process at appropriate levels. We believe that the approach we have adopted in our proposed changes will allow for flexibility to States in the application of the regulation according to their unique circumstances and operating environments, their program goals, and the needs of individual projects. The FHWA will continue to research best practices for work zone safety and mobility and share them with States. This will enable practitioners to modify best practices and incorporate creative and innovative approaches that best suit their needs.

**Section-by-Section Discussion**

*Section 630.1002 Purpose*

Section 630.1002(a). The current regulation states that the purpose of this subpart is to provide guidance and establish procedures to assure that adequate consideration is given to motorists, pedestrians, and workers on all Federal-aid construction projects. We propose to restate that the purpose of this subpart is to address the safety and mobility needs of all road users (motorists, pedestrians, bicyclists, and persons with disabilities), workers, and other affected parties on all Federal-aid projects. These proposed changes are intended to achieve the following:

- Convey the notion that adequate consideration should be given to all road users, rather than just motorists, pedestrians and workers. Therefore we propose to add the term ''all road users,'' which is inclusive of ''motorists, pedestrians, bicyclists, and persons with disabilities.''
- Convey the notion that, in addition to road users, work zones may have safety and mobility impacts on other parties that are affected by the highway or street project. We therefore propose to include the phrase ''and other affected parties,'' after ''workers.'' Affected parties may include: public facilities like parks, recreational facilities, fire stations, police stations, and hospitals; and private parties such as businesses and residences.
- Emphasize the importance of work zone safety and mobility, by restating the purpose statement to specifically indicate that adequate consideration should be given to the ''safety and mobility'' needs of road users (motorists, pedestrians, bicyclists, and persons with disabilities), workers, and other affected parties.

Section 630.1002(b). In this paragraph, we propose to indicate that work zones cause safety and mobility impacts on road users, workers, and affected properties. We propose to highlight one of the key issues that we face today and in the future by stating that work zone impacts are exacerbated by growing congestion in many locations. We therefore, propose to assert that addressing the safety and mobility issues of work zones requires considerations that go beyond the installation of appropriate traffic control devices, and that these considerations should start early in project development and continue through project completion.

*Section 630.1004 References*

We propose to include a new section entitled, ''References'' which contains amended language from the ''Background'' section of the current regulation.

The ''Background'' section of the current regulation recognizes the importance of traffic control for work zone safety, and presents the MUTCD as a guide that provides basic principles and standards for the design, application, installation, and maintenance of various types of traffic control devices during highway construction projects, maintenance operations, and utility work. Further, it discusses the limitations of the MUTCD, the efforts taken by transportation agencies in developing guidelines for work zone traffic control, and the need for greater uniformity in work zone traffic control and more attention to proper implementation of the MUTCD.

We propose to amend this reference to the MUTCD and include it in a new section entitled, ''References''. We propose to retain the current language that refers to the MUTCD as a guide for traffic control, but augment it with language that recognizes that there are considerations in addition to traffic control that are required to comprehensively address the safety and mobility impacts of work zones.

We propose to retain the sentence that describes the content and implications of the MUTCD with regards to provision of guidelines and standards for traffic control. We identify that the MUTCD does not address the other actions that should be taken to help comprehensively mitigate the safety and mobility impacts of work zones. We recognize the efforts taken by transportation agencies to mitigate the safety and mobility impacts of work zones, but note that a more coordinated and comprehensive effort is required to bring about greater consideration of such work zone safety and mobility impacts.

*Section 630.1006 Definitions and Explanation of Terms*

This section is a new section which proposes to include definitions for the terms, ''Work Zone,'' ''Work Zone Impacts,'' ''Transportation Management Plan (TMP),'' ''Traffic Control Plan (TCP),'' ''Transportation Operations Plan (TOP)'', and ''Public Information and Outreach Plan (PIOP).'' We propose to add these definitions because they are considered relevant to the proposed changes, and would have direct implications on the application of the regulation by States.

*Section 630.1008 Policy*

We propose to change the section number for the ''Policy'' section from § 630.1006 to § 630.1008. This section states FHWA's policy on work zone safety and mobility for all Federal-aid highway projects. We propose to include elements that would address the ''mobility'' needs in addition to those that would address the safety needs of all road users, workers, and other affected parties. We propose to amend the last sentence of the paragraph to indicate that States are encouraged to implement these procedures for non-Federal-aid projects, maintenance and utility operations as well.

*Section 630.1010 Implementation*

We propose to change the section number for the ''Implementation'' section from § 630.1008 to § 630.1010. The proposed content of this section is very similar to that of the current regulation. This section outlines the role of the FHWA Division Office, and that of the State in implementing the provisions in the regulation. We propose to modify the first sentence of this section to convey that in addition to reviewing the State's implementation of its procedures, the FHWA shall also be responsible for reviewing the ''conformance'' of the State's procedures with this regulation. We also propose to

append the same sentence with language to convey that the implementation of the regulations is a collaborative process between the State and the FHWA Division Office, by adding the words, ''as agreed upon by the FHWA and the State.'' This conveys that the State and the FHWA Division Office may work together to develop appropriate procedures and determine the most suitable intervals for the FHWA Division Administrator to review the State's implementation of its procedures. We do not propose any modifications to the second sentence in this section. We propose to modify the last sentence in this section of the current regulation by deleting the word ''major'' in ''or revisions'' so as to eliminate ambiguity in interpretation.

*Section 630.1012 State Transportation Department Policy and Procedures*

We propose to reorganize the section entitled ''Contents of the agency procedures,'' under a new title, ''State Transportation Department Policy and Procedures.'' The purpose of this reorganization is to clearly delineate policy level and project level requirements for States. We propose to change the section number for this section from § 630.1010 to § 630.1012. Our proposed changes to this section are explained in the following paragraphs.

This section consists of two main requirements, which are: § 630.1012(a) State Transportation Department Policy, and § 630.1012(b) Project Impact Analysis and Management Procedures.

In § 630.1012(a) ''State Transportation Department Policy'' we propose policy level requirements for States to support the consideration of work zone safety and mobility impacts in the project development process.

In § 630.1012(a) we propose to add the requirement for a ''Work Zone Safety and Mobility Policy.'' This would be a new requirement, where we propose that States shall develop their own ''work zone safety and mobility policies'' that will support the systematic consideration of work zone impacts across all stages of project development; and address the safety and mobility needs of all road users, workers, and other affected parties on all Federal-aid highway projects. All stages of project development include early project level planning through project design, traffic control and operations planning. Such policies would facilitate easier and more streamlined decision making during project development by providing a standardized approach, and by serving as an implementation guide to practitioners who are involved in planning, designing, and implementing road projects.

In § 630.1012(a)(1)(i) we propose to make these policies scaleable according to each State's unique requirements, and that the State may apply its policy to different projects based on the severity of work zone impacts of the project.

In § 630.1012(a)(1)(ii) we propose to recommend that the State involve personnel from different departments and representing the different project development stages in the development of the policy. The proposed language is general and would allow flexibility in the role and makeup of the team. Such a team may be responsible for the analysis and evaluation of the safety and mobility issues related to work zones, and the development, improvement, and institutionalization of the resultant project options as well as the work zone design and impact mitigation strategies for different types of projects. Such a multidisciplinary team may serve as a standing committee of experts on work zones, and may help make informed decisions during the appropriate stages of project development on how best to design and build projects, and mitigate the impacts of work zones. The State may include other stakeholders (*i.e.*, other transportation agencies, police, fire, emergency medical services, and regional transportation management centers), and industry representatives (*i.e.*, engineers, contractors) in developing these policies.

The content of the policy would be determined by the State. The following are examples of topics that may be addressed in these State policies:

- *Project Classification.* A project classification system would be a process to classify road projects into different types, based on the severity of work zone impacts. This classification process would allow the State to apply appropriate policies and practices for the design, implementation, and management of work zones and their impacts, that are best suited to specific project types. The different parameters that affect work zone impacts of projects include, but are not limited to: Road classification; area type (urban, suburban, rural); traffic demand and travel characteristics (lanes affected, Average Daily Traffic, expected capacity reduction, Level of Service); type of work; complexity of work being performed (duration, length, intensity); level of traffic interference with construction activity; and potential impacts on local network and businesses. Project classification systems may range from a simple scheme to classify projects into high impact and low impact, to a multi-dimensional matrix of projects that helps decisionmaking on appropriate work zones treatments for different types of projects. At this time, there are no recommended tiers of projects, and States may develop their own classification system that best suits their needs. It is noteworthy that a simple and straightforward classification system would ensure that it is practical and is also easy to adopt and apply.
- *Work Zone Performance Standards.* Performance standards would establish the safety and mobility performance requirements for work zones for different types of projects, and thereby drive appropriate planning, design and operational strategies that help achieve the set requirements. An example of a performance standard for work zones would be the establishment of a traffic management policy that outlines performance standards for different types of projects. Such a traffic management policy may also outline methods that prescribe limits on lane closures, thresholds on delays and queues due to work zones, and restrictions on work hours so as to achieve the mobility performance standards for different types of projects. The traffic management policy may also include safety performance standards that outline requirements for crash reduction.

  For example, the Ohio Department of Transportation (ODOT) has developed and adopted a policy that sets limitations on the number of lanes that may be closed for construction activities on freeways and ''freeway look-alikes'' (other highways that are similar to freeways). Such performance standards for decisionmaking during the early project planning and preliminary design stages would provide designers and traffic control and operations planners an understanding of the limitations that they are working under, thereby resulting in more comprehensive and complete designs and traffic control and operations plans, which may not require extensive changes during the final stages of design, or during the actual construction phase.
- *Development of Recommendations on Project Options, and Work Zone Design and Impacts Mitigation Alternatives that Suit Different Project Types.* After the establishment of a project classification system and appropriate performance standards, the State may then develop recommendations on alternative project planning and design solutions and strategies that best minimize the work zone impacts for different project types. The availability of Statewide policies and procedures on the most suitable

project options and work zone design and impacts mitigation strategies for the different types of projects would streamline decisionmaking, and ultimately make project delivery more efficient and effective, and work zones less disruptive. Examples of alternative project options and design strategies would include recommendations on work zone strategies (*e.g.*, night work, full-closure); design strategies (*e.g.*, traffic control, choice of materials, use of positive separation); contracting strategies (*e.g.*, low bid, design-build, A+B bidding, incentive/disincentive contracting); and mitigation strategies (*e.g.*, use of intelligent transportation systems, traveler information, real-time work zone monitoring, management and enforcement).

Section 630.1012(a)(2) ''Training.'' The proposed requirements in the ''Training'' section are part of the current regulation in § 630.1010(d). We propose to modify the current language in this section by adding the words ''work zone related transportation management and'' after the word inspection. This would indicate that training related to work zones is not limited to just subjects that address traffic control for work zones. The proposed language reads as follows: ''All persons responsible for the development, design, implementation, operation, and inspection of work zone related transportation management and traffic control shall be adequately trained.'' We propose to add another sentence that encourages documentation of the successful training received by the appropriate personnel, and the provision of periodic training updates that reflect changing industry practices. The proposed amendment would encourage States to keep records of training provided to personnel, and also to periodically provide training updates that are reflective of changing industry practices. The State may choose the most appropriate intervals for providing training updates.

Section 630.1012(a)(3) ''Process Review and Evaluation.'' The current requirements on ''Process Review and Evaluation'' are stated in § 630.1010(e) and we propose to relocate the current language to § 630.1012(a)(3). We propose to add language that would provide flexibility to States on the frequency and the type of reviews. The current regulation requires States to annually review randomly selected projects throughout their jurisdiction for the purpose of assessing the effectiveness of their procedures. We propose to lessen the burden on States by changing the word ''shall'' to ''is encouraged'', and by changing the requirement for ''annual'' reviews to ''periodic'' reviews. With increasing construction activity, and demand for time and resources of State personnel, the requirement to conduct such reviews on an annual basis may overburden States, resulting in perfunctory reviews for the sake of meeting a regulatory requirement. We believe that it is in the States' best interest to conduct reviews of processes and projects at appropriate intervals, so that they can continually improve their processes with regards to work zones and meet the needs of their customers better.

Further, we also propose to remove the requirement for the review and approval of the State's review results by the FHWA Division Administrator. We believe that the process reviews and improvements would be better achieved by a cooperative agreement and understanding between the State and the FHWA Division, which may be addressed in the stewardship agreement. We also propose to encourage States to include an FHWA representative in the process reviews. An overarching proposal would be to include both ''safety and mobility'' considerations in the reviews.

Section 630.1012(a)(4) ''Work Zone Performance Data.'' The current regulation consists of requirements on analysis of construction zone accidents and accident data. These requirements are currently presented under the ''Process Review and Evaluation,'' § 630.1010(e)(2). We propose to relocate the language on work zone crash data collection and analysis from the current ''Process Review and Evaluation'' section and include it under the title, ''Work Zone Performance Data.'' In § 630.1012(a)(4)(i) we propose to retain the crash and crash data analysis requirements, but change ''construction zone accidents and accident data'' to ''crashes and crash data.'' We also propose that States may include other safety performance measures in the analysis. This would be to reflect the trend of increasingly deploying ITS and other automated systems for work zones that indirectly help collect better safety performance data on work zones. Such safety performance measures would include data on speed variance and video data on work zone traffic flow that may help identify potential safety improvements.

In § 630.1012(a)(4)(ii) we propose to add language that would encourage States to collect and analyze work zone mobility performance data to continually improve work zone practices and policies. Examples of mobility performance data would include delay, travel time, traffic volumes, speed, and queue lengths. The purpose of these proposed changes is to bring to the attention of States that both safety and mobility performance measurement and analysis is an essential part of ensuring that we develop and adopt the most effective and efficient practices for improving work zone safety and mobility, thereby delivering on the expectations of our customers.

In § 630.1012(b) ''Project Impact Analysis and Management Procedures'' we propose to require project level procedures that would analyze the work zone impacts of alternative project options and design strategies, and would develop mitigation measures that help manage the work zone impacts. The proposed requirements are: ''Work Zone Impacts Analysis'', ''Transportation Management Plan (TMP)'', ''Pay Items'', and ''Responsible Persons.''

Section 630.1012(b)(1) ''Work Zone Impacts Analysis.'' This would be a new requirement that would require States to analyze the work zone safety and mobility impacts of alternative project options and work zone design strategies, and develop appropriate measures to mitigate the work zone impacts. The purpose of this impacts analysis would be to understand the type, severity and the extent of the work zone impacts associated with the different project alternatives, and to incorporate appropriate mitigation measures and strategies in project design, traffic control, transportation management and operations, and construction. We propose to provide flexibility to States in the performance of these impacts analyses by indicating that the scope and level of detail of the analysis would vary based on the States' policies and their understanding of the anticipated severity of work zone impacts due to the project. For projects with minimal sustained work zone impacts, the State would be exempt from performing a detailed project specific impacts analysis.

States would be encouraged to start the impacts analysis early in project development, and depending on the anticipated severity of work zone impacts due to the project, continue the analysis through project design, and traffic control and operations planning. This means that States would be encouraged to adopt a gradual systematic process for the impacts analysis by initially identifying the anticipated work zone impacts of the project during early project level planning, and based on this identification determine whether a more

detailed impacts analysis is required during the subsequent stages of project development. As proposed, States would be required to document the results of the work zone impacts analysis, the project options, the work zone design strategies, and mitigation measures identified during the process.

In § 630.1012(b)(1)(i) we propose to encourage States to establish a team that would include representatives of the project development stages to discuss, evaluate and document work zone issues, and take responsibility for the development of the project design and work zone mitigation strategies. The size and constitution of the multidisciplinary team and the level of involvement required may vary according to the anticipated work zone impacts. As proposed, we suggest that non-State personnel and affected parties may also be included in this team as appropriate. Such non-State personnel and affected parties may include other transportation agencies, such as counties, cities, local municipalities, Metropolitan Planning Organizations (MPOs), transit providers, police and other emergency response agencies, and representatives of affected businesses and residences.

In § 630.1012(b)(1)(ii) we propose language that states that the impacts analysis would be a systematic process that may require the use of appropriate analytical tools, depending on the degree of detail required for the analysis. Such tools would include transportation modeling and/or simulation software. We also propose that the impacts analysis consist of three main activities that are explained as follows:

In § 630.1012(b)(1)(ii)(A) we propose to include a requirement for States to understand the project, traffic and travel characteristics, and identify the work zone impacts of the project (including impacts of multiple projects at the corridor and network levels, as appropriate).

States may begin by fully understanding the project, traffic and travel characteristics and needs early on in project planning. Based on this understanding the work zone impacts and the parties affected by the work zone can be better identified. States may then develop an overall project design and impacts mitigation strategy. Based on the level of understanding gained from the early analysis, States may decide upon the level of detail that is required for analyzing the work zone impacts of alternative project options and design strategies, and developing the most appropriate mitigation measures. Project, travel, and traffic characteristics may include:

- Traffic demand and volumes, seasonal and temporal variations in demand (hourly, daily, weekly), occurrence of special events, percentages of different vehicular volumes (cars, trucks, buses), type of travel (commuter or tourist), freight corridor, transit corridor, business issues, and other such similar characteristics; and
- State policy requirements on impacts analysis and mitigation requirements for the specific project type and/or regional requirements on work zone impacts mitigation and management.

The work zone impacts of the project may include consideration of the following:

- Impacts of the project at both the corridor and network levels to include parallel corridors, alternate routes, the transportation network, and other modes of transportation, impacts of other work zones in the vicinity of the project, either at the corridor level or the network level;
- Impacts on nearby transportation infrastructure, such as, key intersections and interchanges, railroad crossings, public transit junctions, and other junctions in the transportation network;
- Impacts on evacuation routes in the vicinity of critical transportation or other infrastructure;
- Impacts on affected public properties, including parks, recreational facilities, fire stations, police stations, and hospitals; and
- Impacts of the project on affected private properties, including businesses and residences.

In § 630.1012(b)(1)(ii)(B) we propose to add language that discusses the development and evaluation of alternative project options including design, procurement, and construction strategies that minimize the work zone impacts of the project.

This activity would constitute the development of alternative project options and the evaluation of the respective work zone impacts, so as to mitigate and manage the impacts to the best extent possible. The number of alternative project options and design strategies and the level of detail of the analysis of the work zone impacts would depend on the State's understanding of the individual project needs and the anticipated severity of work zone impacts due to the project. Examples of alternative project options would include design, procurement, and construction strategies such as:

- Temporal alternatives for work performance such as season, month, day of week (weekend vs. weekday), and time of day (night time vs. day, off-peak vs. peak);
- Alternative lane closure strategies such as full-closure, partial closure, cross-overs, multiple lane closure, single lane closure; and impact of alternative traffic management strategies on lane-closure decisions;
- Alternative design solutions that address the durability and economy of maintenance of the roadway;
- Alternative design solutions and strategies that impact decision making on Right of Way (ROW) acquisition;
- Alternative construction staging plans, and construction techniques and methodologies (*e.g.*, accelerated construction techniques) that may have varying types and severity of work zone impacts; and
- Alternative contracting methodologies such as low-bid, design-build, A+B bidding, and incentive/disincentive contracting.

In § 630.1012(b)(1)(ii)(C) we propose to add language that would address the development of transportation management recommendations that mitigate the work zone impacts of the project for the chosen project option, including traffic control, transportation operations and safety, and public information and outreach strategies.

As a final activity in the impacts analysis, this process would develop appropriate transportation management recommendations that would mitigate the work zone impacts of the project. Such transportation management recommendations would include traffic control requirements, transportation operations and safety requirements, and public information and outreach requirements. These requirements would be grouped and documented in the TMP, which is explained in the following paragraphs.

Traffic control requirements would include recommendations on strategies to safely and efficiently handle traffic flow through the actual work zone itself. Examples of traffic control requirements would include recommendations on lane closure widths, work zone and work area configuration, tapers, and the choice and positioning of traffic control and safety devices.

Examples of transportation operations recommendations would include the following:

- The deployment of Intelligent Transportation Systems (ITS) technologies for work zone traffic monitoring and management;
- Provision of real-time traveler information to the public, including information provision on Web sites;

• Application of transportation systems management (TSM) and corridor management strategies, including mitigation treatments for alternate routes (for *e.g.*, traffic signal timing adjustment on affected corridors), and alternate modes (for *e.g.*, public transit subsidies, incentives and special programs);

• Coordination of transportation management with existing regional Transportation Management Centers (TMCs);

• Conduct of mobility and safety reviews and audits;

• Speed enforcement and management in work zones using either police officers or through automated techniques;

• Incident management plans for work zones; and

• Policies on work zone traffic management during emergency situations, for *e.g.*, hurricane evacuations or other natural disasters.

Examples of public information and outreach recommendations may include the following communications requirements:

• Provision of project and work zone information prior to the commencement of the work in order to make the public aware of the expected work zone impacts and the State's actions to mitigate the impacts;

• Provision of recommendations to the public on commuter alternatives, such as information on alternate routes and alternate modes;

• Provision of information on changing conditions on the project during the course of its implementation (for *e.g.*, changes in lane closure scenarios, construction staging, construction times, alternate routing); and

• Obtaining public input into the development of appropriate work zone impacts mitigation strategies during the planning and design phases of the project; the refinement of work zone traffic management and mitigation strategies during the course of the project implementation; and public feedback on performance of the work zone and project after the completion of the project.

Examples of public information and outreach sources that the State may consider for the public information and outreach plan would include the following:

• Dissemination of information through brochures, pamphlets and media sources including newspapers, television and radio channels, and Web sites;

• Public meetings and hearings;

• Coordination and cooperation with affected public and private parties;

• Establishment of telephone hotlines; and

• Focus groups, surveys, and market research for obtaining input and feedback from the public.

In § 630.1012(b)(2) we propose to establish the requirement for a Transportation Management Plan (TMP). The TMP would be a new requirement with the current requirements on the Traffic Control Plan (TCP) updated and rolled into it. The TMP would document the work zone mitigation and management strategies recommended by the work zone impacts analysis.

In § 630.1012(b)(2) we propose language to indicate that a TMP would document the mitigation strategies identified during the work zone impacts analysis. We propose that a TMP would have three coordinated components, namely the Traffic Control Plan (TCP), the Transportation Operations Plan (TOP), and the Public Information and Outreach Plan (PIOP). We propose to indicate that the content and degree of detail of the TMP will vary according to the severity of work zone impacts due to the project. We propose to require that States shall develop TMPs for projects based on their policy requirements and the severity of work zone impacts due to the project. We then propose to outline the requirements for the individual TMP components in § 630.1012(b)(2)(i)—''TCP,'' § 630.1012(b)(2)(ii)—''TOP,'' and § 630.1012(b)(2)(iii)—''PIOP.'' The proposed content for these sections are explained in the following paragraphs.

In § 630.1012(b)(2)(i) we outline the proposed requirements for a Traffic Control Plan (TCP). As proposed, the TMP would include a TCP or provisions that would allow contractors to develop a State approved TCP prior to the start of work. This means that TCPs would be developed for all projects. It also means that States may involve contractors in the development of TCPs based on their understanding of the construction staging and strategies.

We propose to retain the current language on the definition of TCPs, and include the consideration of mobility by stating that it is a plan for safely and efficiently handling traffic through a specific highway or street work zone or project. We propose that TCPs may range in scope from a very detailed TCP designed solely for a specific project, a section of the MUTCD, or reference to approved standard plans or State transportation department manual. We also propose that for projects that have minimal work zone impacts, the TCP would be the only component of the TMP.

The scope of the TCP would be determined by the anticipated construction staging and scheduling, and the traffic safety and control requirements identified in the work zone impacts analysis. The plans, specifications, and estimates (P.S. & E.s) would include either a State-prepared TCP; or provisions for contractors to develop a TCP, approved by the State, prior to start of the work. We also propose to retain the current language that the TCP shall be consistent with the provisions of the MUTCD.

We propose to delete the current language in the regulation that addresses TCP requirements for the work zone operations of two-lane, two-way highways as that language is available in the MUTCD. The reason why we propose to include the TCP as a component of the TMP is to present the need for a synergistic, coordinated approach to developing and implementing traffic control and transportation management strategies.

In § 630.1012(b)(2)(ii) we outline the requirements for a Transportation Operations Plan (TOP). We propose to include the development of a TOP as part of the TMP for projects. We propose that States would include a TOP in the TMP if recommended by the results of the work zone impacts analysis. A TOP would include considerations that address the safety and mobility of the transportation system by adopting strategies for the sustained operations and management of the work zone impact area. Such strategies would include transportation systems management; corridor management; and traffic management operations and safety (*i.e.*, ITS based traffic control and traveler information, speed management and enforcement, incident and emergency management, safety reviews and audits). We propose to recommend that States coordinate the TOP with stakeholders (*i.e.*, other transportation agencies, police, fire, emergency medical services, and regional transportation management centers).

We propose to indicate that the scope of the TOP would be determined by the transportation operations and safety requirements identified in the work zone impacts analysis. We propose that the TOP may be included in the P.S. & E.s. This would provide the State flexibility to contract the TOP as part of the overall contract for the project, or hire a separate contractor for implementing the TOP. We also propose that provisions may be made in the P.S.&E.s for contractors to develop a TOP, approved by the State, prior to the

start of work. This would provide the State an opportunity to involve the contractor in the development of the TOP.

In § 630.1012(b)(2)(iii) we outline the requirements for a Public Information and Outreach Plan (PIOP). We propose to include the development of PIOPs as part of the TMP for projects. We propose that States would include a PIOP in the TMP, if recommended by the results of the work zone impacts analysis. A PIOP would consist of project level communications that would ensure that affected road users, the general public, residences and businesses, and the appropriate public entities are informed about the project, the expected work zone impacts, and the changing conditions of the project. Through the PIOP we propose to encourage States to provide adequate (*i.e.*, frequent, current, and near-real-time where appropriate) information for the affected parties to make informed travel decisions that help alleviate the work zone impacts of the project.

We propose to identify that the scope of the PIOP would be determined by the public information and outreach requirements identified in the work zone impacts analysis. We propose that the State may choose to include the PIOP in the P.S.&E.s. This would provide the State the flexibility to contract the PIOP as part of the overall contract for the project, or hire a separate contractor for implementing the PIOP. We also propose that alternatively, States may choose to include provisions in the P.S.&E.s for contractors to develop a PIOP, approved by the State, prior to the start of work. This would provide the State an opportunity to involve the contractor in the development of the PIOP.

In § 630.1012(b)(3) we propose to amend the requirements for ''Pay Items.'' This is an existing requirement, with proposed changes that would allow both method based and performance based specifications for procurement, and emphasize the need for unit pay items in the case of method based procurement for TCPs. It also proposes to allow the State flexibility in including the other TMP components in the P.S.&E. package.

In § 630.1012(b)(4) we propose to amend the requirements for ''Responsible Persons.'' This is an existing requirement, with proposed changes that would require a responsible person at the project level from the contractor, in addition to the responsible person from the State.

**Compliance Date**

We propose that the compliance date be 3 years after the effective date of the final rule. This would allow States time to implement the proposed requirements.

**Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. We will file comments received after the comment closing date in the docket and will consider later comments to the extent practicable. We may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, we will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

**Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FHWA has determined that the proposed rule would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this action would be minimal.

These proposed changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, these changes are not likely to interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Based upon the information received in response to this NPRM, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), we have evaluated the effects of this rule on small entities. This rule applies to State departments of transportation in the execution of their highway program with respect to work zones. The implementation of the proposed provisions in this rule will therefore not affect the economic viability or sustenance of small entities. Accordingly, the FHWA certifies that the proposed action will not have a significant economic impact on a substantial number of small entities.

**Unfunded Mandates Reform Act of 1995**

This proposed action does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The actions proposed in this NPRM would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector.

**Executive Order 13132 (Federalism)**

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this proposed action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation or affects the States' ability to discharge traditional State governmental functions.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Paperwork Reduction Act of 1995**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

The FHWA has determined that this proposed rule contains a requirement for data and information to be collected and maintained in the support of design, construction, and operational decisions that affect the safety and

mobility of the traveling public related to highway and roadway work zones. In order to streamline the process, the FHWA intends to request that the OMB approve a single information collection clearance for all of the data in the proposed regulation.

The FHWA estimates that a total of 83,200 burden hours per year would be imposed on non-Federal entities to provide the required information for the proposed regulation requirements. Respondents to this information collection include State Transportation Departments from all 50 States, Puerto Rico, and the District of Columbia. The estimates here only include burdens on the respondents to provide information that is not usually and customarily collected.

The FHWA is required to submit this proposed collection of information to OMB for review and approval, and accordingly, seeks public comments. Comments regarding any aspect of these information collection requirement, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

**Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that this proposed action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. This rulemaking primarily applies to urbanized metropolitan areas and National Highway System (NHS) roadways that are under the jurisdiction of State transportation departments. The purpose of this proposed action is to mitigate the safety and mobility impacts of highway construction and maintenance projects on the transportation system, and would not impose any direct compliance requirements on Indian tribal governments and will not have any economic or other impacts on the viability of Indian tribes. Therefore, a tribal summary impact statement is not required.

**Executive Order 13211 (Energy Effects)**

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use. We have determined that this proposed action will not be a significant energy action under that order because any action contemplated will not be a significant regulatory action under Executive Order 12866 and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we believe that the implementation of the proposed provisions by State departments of transportation would reduce the amount of congested travel on our highways, thereby reducing the fuel consumption associated with congested travel. Therefore, the FHWA certifies that a Statement of Energy Effects under Executive Order 13211 is not required.

**National Environmental Policy Act**

The FHWA has analyzed this proposed action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347 *et seq.*) and has determined that this proposed action will not have any effect on the quality of the environment. Further, we believe that the implementation of the proposed provisions by State departments of transportation would reduce the amount of congested travel on our highways. This reduction in congested travel would reduce automobile emissions that are induced by congested travel, thereby contributing to a cleaner environment.

**Executive Order 12630 (Taking of Private Property)**

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

**Executive Order 12988 (Civil Justice Reform)**

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Executive Order 13045 (Protection of Children)**

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action will not cause an environmental risk to health or safety that may disproportionately affect children.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 630**

Government contracts, Grant programs—transportation, Highway safety, Highways and roads, Project agreement, Traffic regulations.

Issued on April 29, 2003.

**Mary E. Peters,**

*Federal Highway Administrator.*

In consideration of the foregoing, the FHWA proposes to revise title 23, Code of Federal Regulations, part 630, subpart J as set forth below:

## PART 630—PRECONSTRUCTION PROCEDURES

1. The authority citation continues to read as follows:

**Authority:** 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

2. Revise subpart J of part 630 to read as follows:

## Subpart J—Work Zone Safety and Mobility

Sec.



### § 630.1002 Purpose.

(a) This subpart provides guidance and establishes procedures to assure that adequate consideration is given to the safety and mobility of all road users (motorists, pedestrians, bicyclists, and persons with disabilities [1]), workers,

[1] The Americans with Disabilities Act (Pub. L. 101–336, 104 Stat. 327 (1990)) requires that people with disabilities not be discriminated against and provided the same opportunities as non-disabled

Continued

and other affected parties on all Federal-aid projects.

(b) Work zones impact the safety and mobility of road users, workers, businesses, and other affected parties. These safety and mobility impacts are exacerbated by growing congestion in many locations. Addressing these issues requires considerations that start early in project development and continue through project completion. These considerations go beyond the installation of appropriate traffic control devices.

**§ 630.1004 References.**

Part 6 of the Manual On Uniform Traffic Control Devices (MUTCD)[2] sets forth basic principles and prescribes standards for the design, application, installation, and maintenance of the various types of traffic control devices for highway and street construction, maintenance operation, and utility work. However, the MUTCD does not address the other actions that should be taken to help mitigate the safety and mobility impacts of work zones. Although agencies responsible for road projects have taken some steps to consider work zone safety and mobility impacts in project development, a coordinated and comprehensive effort is required to bring about greater consideration of such work zone safety and mobility impacts.

**§ 630.1006 Definitions and explanation of terms.**

As used in this subpart:

*Public Information and Outreach Plan (PIOP)* means project level communications that ensure that affected road users, the general public, residences and businesses, and the appropriate public entities are informed about the project, the expected work zone impacts, and the changing conditions on the project.

*Traffic Control Plan (TCP)* means a plan for safely and efficiently handling traffic through a specific highway or street work zone or project.

*Transportation Management Plan (TMP)* means a document which outlines various transportation management strategies to alleviate work zone impacts of projects. These strategies address traffic control, transportation operations and safety, and public information and outreach, which are aligned in the TMP as three coordinated components: a traffic control plan (TCP), a traffic operations plan (TOP), and a public information and outreach plan (PIOP). The content of the TMP will vary based on the severity of work zone impacts due to a project.

*Transportation Operations Plan (TOP)* means considerations that address the safety and mobility of the transportation system by adopting strategies for the sustained operations and management of the work zone impact area. The TOP consists of strategies that address transportation systems management; corridor management; and traffic management operations and safety (*i.e.*, Intelligent Transportation Systems (ITS) based traffic control and traveler information, speed management and enforcement, incident and emergency management, safety reviews and audits).

*Work zone*[3] means an area of a highway with construction, maintenance, or utility work activities. A work zone is typically marked by signs, channelizing devices, barriers, pavement markings, and/or work vehicles. It extends from the first warning sign or rotating/strobe lights on a vehicle to the END ROAD WORK sign or the last temporary traffic control device.

*Work zone crash* means a traffic crash in which the first harmful event occurs within the boundaries of a work zone or on an approach to or exit from a work zone, resulting from an activity, behavior or control related to the movement of the traffic units through the work zone. Includes collision and non-collision crashes occurring on approach to, exiting from or adjacent to work zones that are related to the work zone.

*Work zone impacts* means the deviation from normalcy of the transportation system induced by work zones, resulting in impacts on the safety and mobility of road users, workers, and other affected parties. The extent of the work zone impacts may vary based on factors such as road classification, area type (urban, suburban, and rural), traffic and travel characteristics, type of work being performed, and complexity of the project. These impacts may extend beyond the physical location of the work zone itself, and may be felt on the roadway on which the work is being performed, as well as other highway corridors, other modes of transportation, and (or) the regional transportation network to which the influence of the work zone extends.

**§ 630.1008 Policy.**

It is the policy of the Federal Highway Administration that each State Transportation Department (hereinafter referred to as ''State'') shall develop and implement policies and procedures consistent with the requirements of this regulation that will assure the safety and mobility needs of all road users, construction workers, and other affected parties on Federal-aid highway projects. States are encouraged to implement these policies and procedures for non-Federal-aid highway projects.

**§ 630.1010 Implementation.**

The FHWA shall review the conformance of the State's policies and procedures with this regulation, and reassess the State's implementation of its procedures at appropriate intervals. The FHWA shall take other appropriate actions to assure that the State's policies and procedures are being followed and achieve the results intended. Revisions in established policies and procedures shall be submitted to the FHWA for information.

**§ 630.1012 State Transportation Department Policy and Procedures.**

The State transportation department policy and procedures shall include, but not necessarily be limited to, the following:

(a) *State Transportation Department Policy.*—(1) *Work Zone Safety and Mobility Policy.* Each State shall develop and implement policies and procedures that support the systematic consideration of work zone impacts across all project development stages; and address the safety and mobility needs of all road users, construction workers, and other affected parties on all Federal-aid highway projects.

(i) The content of such policies and their implications for different projects will vary based on the expected severity of work zone impacts due to projects.

(ii) States are encouraged to use a team of personnel from appropriate departments and representing the different project development stages to develop and implement these policies and procedures.

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people. This applies to issues of access in work zones (Title II & III, ADA). Since 1991 there have been specific design standards, Americans with Disabilities Act Accessibility Guidelines (ADAAG) that provide minimum requirements for all environments including temporary work done by utility companies. The existing ADAAG standards are codified at 28 CFR part 36 as Appendix A. Compliance with the ADAAG standards or with the Uniform Federal Accessibility Standards (UFAS), (which is codified at Appendix A to 41 CFR part 101–19.6) constitutes compliance with Federal ADA accessibility requirements.

[2] The MUTCD Millenium Edition (official FHWA publication is in electronic format only) is available at the URL: *http://mutcd.fhwa.dot.gov.* A looseleaf binder format of the MUTCD is published by a partnership of the American Association of State Highway and Transportation Officials (AASHTO), the American Traffic Safety Association (ATSSA), and the Institute of Transportation Engineers (ITE), and is available for purchase at the URL: *http://www.aashto.org/bookstore.*

[3] MUTCD, Part 6, Temporary Traffic Control Zones, sec. 6C. 02.

(2) *Training.* All persons responsible for the development, design, implementation, operation, and inspection of work zone related transportation management and traffic control shall be adequately trained. States are encouraged to keep records of the training successfully completed by these personnel, and provide periodic training updates that reflect changing industry practices.

(3) *Process review and evaluation.* In order to assess the effectiveness of work zone safety and mobility procedures, States are encouraged to perform a periodic process review and evaluation, or review randomly selected projects throughout their jurisdictions. Appropriate State personnel who are representative of the project development stages and the different departments within the State are encouraged to participate in this review. States are encouraged to include an FHWA representative as a member of the review team, and to address the reviews in the stewardship agreements between each State and the FHWA.

(4) *Work zone performance data.* (i) Work zone crashes and crash data shall be analyzed and used to correct deficiencies which are found to exist on individual projects, and to continually improve work zone practices and policies. Other safety performance factors may be included in the analysis.

(ii) States are encouraged to collect and analyze work zone mobility performance data to correct deficiencies, which are found to exist on individual projects, and to continually improve work zone practices and policies.

(b) *Project impact analysis and management procedures.*—(1) *Work Zone Impacts Analysis.* The State shall analyze the work zone impacts of alternative project options and work zone design strategies, and develop appropriate measures to alleviate these impacts. The scope and level of detail of this impacts analysis will vary based on the State's policies, and their understanding of the anticipated severity of work zone impacts due to the project. If the State determines that a project is expected to have minimal sustained work zone impacts, they may exempt the project from the impacts analysis. The State is encouraged to start the impacts analysis early in the project development process and, depending upon the anticipated severity of work zone impacts due to the project, continue the analysis through project design, and traffic control and operations planning. The resultant project options and work zone design strategies and the mitigation measures recommended by the work zone impacts analysis shall be appropriately documented.

(i) The State is encouraged to establish a team that includes representatives of the project development stages to discuss, evaluate and document work zone issues, and take responsibility for the development of the project design and work zone mitigation strategies. Non-State personnel, including transit providers, freight movers, public safety and other affected parties, may be included in this team as appropriate.

(ii) The work zone impacts analysis is a systematic process that may require the use of appropriate analytical tools. It consists of the following activities:

(A) Understanding of the project and traffic and travel characteristics, and identification of the work zone impacts of the project (including impacts of multiple projects at the corridor and network levels, as appropriate).

(B) Development and evaluation of alternative project options including design, procurement, and construction strategies that minimize the work zone impacts of the project.

(C) Development of transportation management recommendations that mitigate the work zone impacts of the project, including traffic control, transportation operations and safety, and public information and outreach strategies.

(2) *Transportation Management Plan (TMP).* A Transportation Management Plan (TMP) documents the mitigation strategies identified during the work zone impacts analysis. A TMP has three coordinated components: Traffic Control Plan (TCP), Transportation Operations Plan (TOP), and Public Information and Outreach Plan (PIOP). The content and degree of detail of the TMP components will depend on the severity of work zone impacts due to the project. Based upon the State's policy requirements and the recommendations from the work zone impacts analysis, the State shall develop a TMP for the project. The requirements for the TMP components are as follows:

(i) *Traffic Control Plan (TCP).* (A) The TMP shall include a TCP or provisions for the development of a State-approved TCP prior to start of work. A TCP is a plan for safely and efficiently handling traffic through a specific highway or street work zone or project. These plans may range in scope from a very detailed TCP designed solely for a specific project, a reference to a specific section of the MUTCD, or reference to approved standard plans or State transportation department manual.

(B) For projects that have minimal work zone impacts, the TCP may be the only component of the TMP.

(C) The scope of the TCP is determined by the anticipated work staging and scheduling, and the traffic safety and control requirements identified in the work zone impacts analysis.

(D) The plans, specifications, and estimates (P.S.&E.s) shall include either a State-prepared TCP; or provisions for contractors to develop a TCP, approved by the State, prior to start of the work.

(E) The TCP shall be consistent with the MUTCD provisions for Temporary Traffic Control Zones and Temporary Traffic Control Plans.

(ii) *Transportation Operations Plan (TOP).* (A) If recommended by the results of the work zone impacts analysis, the TMP shall include a TOP. A TOP includes considerations that address the safety and mobility of the transportation system by adopting strategies for the sustained operations and management of the work zone impact area.

(B) The TOP consists of strategies that address transportation systems management; corridor management; and traffic management operations and safety (*i.e.*, Intelligent Transportation Systems (ITS) based traffic control and traveler information, speed management and enforcement, incident and emergency management, safety reviews and audits). Development and sustained coordination of the TOP in partnership with stakeholders (*i.e.*, other transportation agencies, transit providers, freight movers, utility suppliers, police, fire, emergency medical services, and regional transportation management centers) is encouraged.

(C) The scope of the TOP is determined by the transportation operations and safety requirements identified in the work zone impacts analysis.

(D) The TOP may be included in the P.S.&E.s. Alternatively, provisions may be made in the P.S.&E.s for contractors to develop a TOP, approved by the State, prior to the start of work.

(iii) *Public Information and Outreach Plan (PIOP).* (A) If recommended by the results of the work zone impacts analysis, the TMP shall include a PIOP. A PIOP consists of project level communications that ensure that affected road users, the general public, residences and businesses, and the appropriate public entities are informed about the project, the expected work zone impacts, and the changing conditions on the project.

(B) Through the PIOP, States are encouraged to provide adequate (*i.e.*, frequent, current, and near-real-time where appropriate) information for the affected parties to make informed travel decisions that help alleviate the work zone impacts of the project.

(C) The scope of the PIOP is determined by the public information and outreach requirements identified in the work zone impacts analysis.

(D) The PIOP may be included in the P.S.&E.s. Alternatively, provisions may be made in the P.S.&E.s for contractors to develop a PIOP, approved by the State, prior to the start of work.

(3) *Pay Items.* (i) The P.S. & E.s shall include pay item provisions for implementing the TCP. For method-based specifications for implementing the TCP, the P.S.&E.s shall include unit pay items to cover the cost of providing, installing, moving, replacing, maintaining, and cleaning traffic control devices. In the case of performance specifications, the P.S.&E.s will include pay item provisions for the targeted performance criteria. Suitable force account procedures may be used. Lump-sum method of payment may be used only to cover very small projects, projects of short duration, contingency, and general items.

(ii) The State may choose to include appropriate pay item provisions for the other TMP components in the P.S.&E.s.

(4) *Responsible Persons.* The State and the contractor shall each designate a qualified person at the project level who will have the primary responsibility and sufficient authority for assuring that the TMP and other safety and mobility aspects of the contract are effectively administered.

**§ 630.1014 Compliance Date.**

State Transportation Departments must comply with all elements of this policy no later than June 6, 2006.

[FR Doc. 03–11020 Filed 5–6–03; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–152524–02]**

**RIN 1545–BB38**

## Guidance Under Section 1502; Amendment of Waiver of Loss Carryovers From Separate Return Limitation Years

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under section 1502 that permit the amendment of certain elections to waive the loss carryovers of an acquired subsidiary. The text of the temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by August 5, 2003. Outlines of topics to be discussed at the public hearing scheduled for August 6, 2003, at 10 a.m., must be received by July 16, 2003.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG–152524–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–152524–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs.* The public hearing will be held in room 6718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Alison G. Burns or Jeffrey B. Fienberg, (202) 622–7930; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 7, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation was previously approved and reviewed by the Office of Management and Budget under control number 1545–1774. The collection of information is required to allow the taxpayer to make certain elections to determine the amount of allowable loss under § 1.337(d)–2T, § 1.1502–20 as currently in effect, or under § 1.1502–20 modified so that the amount of allowable loss determined pursuant to § 1.1502–20(c)(1) is computed by taking into account only the amounts computed under § 1.1502–20(c)(1)(i) and (ii); to allow the taxpayer to reapportion a section 382 limitation in certain cases; to allow the taxpayer to waive certain loss carryovers; and to ensure that loss is not disallowed under § 1.337–2T and basis is not reduced under § 1.337(d)–2T to the extent that the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset.

This collection of information is modified with respect to §§ 1.1502–20T and 1.1502–32T. Regarding § 1.1502–20T, the collection of information also is necessary to allow the common parent of the selling group to reapportion a separate, subgroup or consolidated section 382 limitation when the acquiring group amends its § 1.1502–32(b)(4) election. With respect to § 1.1502–32T, the collection of information also is necessary to allow the acquiring group to amend its previous § 1.1502–32(b)(4) election, so that it may use previously waived losses of its subsidiary.

The collection of information is required to obtain a benefit. The likely

respondents are corporations that file consolidated income tax returns.

*Estimated total annual reporting and/or recordkeeping burden:* 30,400 hours.

*Estimated average annual burden per respondent:* 2 hours.

*Estimated number of respondents:* 15,200.

*Estimated annual frequency of responses:* once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background and Explanation of Provisions**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1502. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issues of the proposed regulations.

**Proposed Effective Date**

These proposed regulations will be effective on the date they are published as final regulations in the **Federal Register**.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily will affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses, and, moreover, that any burden on taxpayers is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to § 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 6, 2003, beginning at 10 a.m. in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by July 16, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal author of these regulations is Jeffrey B. Fienberg, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

**Par. 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.1502–20 is amended by redesignating paragraph (i)(5) as (i)(6) and by adding paragraphs (i)(3)(viii) and (i)(5) to read as follows:

**§ 1.1502–20 Disposition or deconsolidation of subsidiary stock.**

[The text of this proposed section is the same as the text of § 1.1502–20T(i)(3)(viii) and (i)(5) published elsewhere in this issue of the **Federal Register**.]

**Par. 3.** Section 1.1502–32 is amended by adding paragraph (b)(4)(vii) to read as follows:

**§ 1.1502–32 Investment adjustments.**

[The text of this proposed section is the same as the text of § 1.1502–32T(b)(4)(vii) published elsewhere in this issue of the **Federal Register**].

* * * * *

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

[FR Doc. 03–11210 Filed 5–6–03; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–126485–01]**

**RIN 1545–BA06**

### Statutory Mergers and Consolidations; Hearing Cancellation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels the public hearing on proposed regulations relating to statutory mergers and consolidations.

**DATES:** The public hearing originally scheduled for Wednesday, May 21, 2003, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Guy Traynor in the Regulations Unit, Associate Chief Counsel (Procedure & Administration), at (202) 622–7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, January 24, 2003 (68 FR 3477), announced that a public hearing was scheduled for May 21, 2003, at 10 a.m. in room 4718 of the Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is

proposed regulations under section 368 of the Internal Revenue Code. The deadline for submitting outlines and requests to speak at the hearing for these proposed regulations expired on April 24, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of May 2, 2003, no one has requested to speak. Therefore, the public hearing scheduled for May 21, 2003, is cancelled.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Associate Chief Counsel (Procedure & Administration).*

[FR Doc. 03–11368 Filed 5–6–03; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1, 54, and 602

**[TD 9052]**

**RIN 1545–BA08**

### Notice of Significant Reduction in the Rate of Future Benefit Accrual; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to final regulations that were published in the **Federal Register** on Wednesday, April 9, 2003 (68 FR 17277). This document contains final regulations providing guidance on the notification requirements under section 4908F of the Internal Revenue Code (Code) and section 204(h) of the Employee Retirement Income Security Act of 1974 (ERISA).

**DATES:** This correction is effective April 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** Pamela R. Kinard (202) 622–6060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The final regulations that are the subject of this correction are under section 4980F of the Internal Revenue Code and section 204(h) of the Employee Retirement Income Security Act of 1974 (ERISA).

#### Need for Correction

As published, final regulations (TD 9052) contains errors that may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the publication of the final regulations (TD 9052), which is the subject of FR. Doc. 03–8290, is corrected as follows:

1. On page 17280, column 2, in the preamble, under the subject heading ''Effective Date'', line 4, the language ''is on or after September 2, 2003.'' is corrected to read ''is on or after September 1, 2003.''.

**§ 54.4980F–1 [Corrected]**

2. In § 54.4980F–1, paragraph (b)(1), the language ''September 2, 2003.'' is corrected to read ''September 1, 2003.''

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 03–11369 Filed 5–6–03; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[CG01–03–015]**

**RIN 1625–AA97**

### Safety Zone; Hudson River, Middle Ground Flats, Hudson, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone for a fireworks display on the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the affected waterway.

**DATES:** Comments and related material must reach the Coast Guard on or before June 6, 2003.

**ADDRESSES:** You may mail comments and related material to Waterways Oversight Branch (CGD01–03–015), Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 204, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander E. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

**SUPPLEMENTARY INFORMATION:**

#### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–015), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

The City of Hudson, New York has submitted an application to hold a fireworks display from a barged moored at the Hudson Wharf. The proposed safety zone includes all waters of the Hudson River within a 100-yard radius of the fireworks barge in approximate position 42°15′21.0″ N 073°47′58″ W, about 495 feet east of Hudson River Lighted Buoy 133 (LLNR 38585).

Marine traffic would still be able to transit through the western 110 feet of the 400-foot wide channel and to the west of Middle Ground Flats. Additionally, vessels would not be precluded from mooring at or getting underway from piers in the vicinity of the proposed safety zone.

The proposed regulation would be effective from 9 p.m. to 10:30 p.m. on Saturday, June 14, 2003. In case of inclement weather the regulation would be effective from 9 p.m. to 10:30 p.m. on Sunday, June 15, 2003. It would prohibit all vessels and persons from

transiting this portion of the Hudson River and is needed to provide for the safety of life on navigable waters during the event.

**Discussion of Proposed Rule**

The proposed safety zone is for the City of Hudson Flag Day Festival Fireworks Display held on a barge moored to the Hudson Wharf. The event would be held on Saturday, June 14, 2003. In case of inclement weather the event would be held on Sunday, June 15, 2003. This rule is being proposed to provide for the safety of life on navigable waters during the event.

The proposed size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 4 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area.

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This finding is based on the minimal time that vessels will be restricted from the zone, vessels will still be able to transit through the western 110 feet of the 400-foot wide channel and to the west of Middle Ground Flats, and vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zone. Advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information broadcast, electronic mail distribution, and on the Internet at *http://www.harborops.com.*

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Hudson River during the times this zone is activated.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can still transit through the Hudson River during the event; vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zone. Before the effective period, we will ensure wide dissemination of maritime advisories widely available to users of the Hudson River by Local Notice to Mariners, marine information broadcasts, electronic mail distribution, and on the Internet at *http://www.harborops.com.*

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander E. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes a safety zone. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

2. From 9 p.m. June 14, 2003, to 10:30 p.m. June 15, 2003, add temporary § 165.T01–015 to read as follows:

**§ 165.T01–015 Safety Zone; Hudson River, Middle Ground Flats, Hudson, NY.**

(a) *Regulated Area.* The following area is a safety zone: All waters of the Hudson River within a 100-yard radius of the fireworks barge in approximate position 42°15′21.0″ N 073°47′58″ W, about 495 feet east of Hudson River Lighted Buoy 133 (LLNR 38585).

(b) *Enforcement period.* This section will be enforced from 9 p.m. to 10:30 p.m. on Saturday, June 14, 2003. In case of inclement weather this section will be enforced from 9 p.m. to 10:30 p.m. on Sunday, June 15, 2003.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 24, 2003.

**C.E. Bone,**

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

[FR Doc. 03–11297 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[COTP San Diego 03–011]**

**RIN 1625–AA00**

## Security Zone; Waters Adjacent to National City Marine Terminal

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent security zone in the waters adjacent to the National City Marine Terminal in San Diego Bay, San Diego, CA. This action is needed to protect the U.S. Naval vessel(s) and their crew(s) during military outload evolutions at the National City Marine Terminal from sabotage, or other subversive acts, accidents, criminal actions or other causes of a similar nature. Entry, transit, or anchoring in this zone is prohibited unless authorized by the Captain of the Port (COTP) San Diego, or his designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before July 7, 2003.

**ADDRESSES:** You may mail comments and related material to Coast Guard Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, California, 92101. The Port Operations Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office San Diego, Port Operations Department, 2716 North Harbor Drive, San Diego, California, 92101, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Petty Officer Austin Murai, USCG, c/o U.S Coast Guard Captain of the Port, telephone (619) 683–6495.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking, (COTP San Diego 03–011), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In our final rule, we will include a concise general statement of the comments received and identify any changes from the proposed rule based on the comments. If as we anticipate, we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so as required by 5 U.S.C. 553(d)(3).

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office San Diego at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

**Background and Purpose**

The United States Navy conducts military outload operations from the National City Marine Terminal. These operations involve the loading of men and equipment onboard USNS ships and other Naval vessels for the furtherance of our national security. These onload evolutions are often short fused and are directed at a moments notice. In an effort to protect the onload

evolutions and provide adequate notice to the public, the Captain of the Port of San Diego proposes to establish a permanent security zone around the National City Marine Terminal which will be enforced when such a military onload evolution occurs.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended The Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways.

In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard proposes to establish a permanent security zone in the navigable waters of the United States adjacent to the National City Marine Terminal. The action proposed under this rule is necessary to protect the U.S. Naval vessel(s) and their crew(s) during these military outload evolutions at the National City Marine Terminal from sabotage, or other subversive acts, accidents, criminal actions or other causes of a similar nature.

**Discussion of Proposed Rule**

Due to National Security interests, the implementation of this security zone is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for the U.S. Naval vessel(s), their crew(s), adjoining areas, and the public.

The military outload evolutions involve the transfer of military equipment from a shore side staging area to various Military Sealift Command vessels and other contracted vessels. The security zone will accompany other security measures implemented at the National City Marine Terminal waterfront facility.

Due to complex planning, national security reasons, and coordination with all military schedules, information regarding the precise location and date of the military outloads will not be circulated, however, prior to any outload evolution, the public will be notified that the security zone is in effect and will be enforced. The enforcement of the security zone will be announced via broadcast notice to mariners, local notice to mariners, or by any other means that is deemed appropriate.

This security zone is established pursuant to the authority of the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations. Vessels or persons violating this section are subject to he penalties set forth in 50 U.S.C. 192 which include seizure and forfeiture of the vessel, a monetary penalty of not more than $12,500, and imprisonment for not more than 10 years.

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to the zone, the effect of this regulation will not be significant because: (i) The zone will encompass only a small portion of the waterway; (ii) vessels will be able to pass safely around the zones; and (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting U.S. Naval vessel(s), their crew(s), and the public. Accordingly, full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the DHS is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Most of the traffic in this area is recreational traffic and sightseers. The economic impact is minimal by having them gain permission to transit through the zone from the COTP or his representative. The Coast Guard has coordinated with known private business owners in an effort to reduce any substantial impact on business.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule or if you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, Chief of Port Operations, U.S. Coast Guard Marine Office San Diego at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the order.

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A ''Categorical Exclusion Determination'' and checklist are available in the docket for inspection or copying where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

2. Add § 165.1109 to read as follows:

**§ 165.1109 Security Zone; National City Marine Terminal, San Diego, CA.**

(a) *Location*. The security zone consists of the navigable waters surrounding the National City Marine Terminal and encompassing Sweetwater Channel. The limits of this security zone are more specifically defined as the area enclosed by the following points: starting on shore at 32°39′25″ N 117°07′15″ W, then extending northerly to 32°39′32″ N 117°07′16″ W, then extending westerly to 32°39′29″ N 117°07′36″ W, then southerly to 32°39′05″ N 117°07′34″ W, and then easterly to shore at 32°39′06″ N 117°07′14.5″ W. All coordinates are North American Datum 1983.

(b) *Regulations*. (1) In accordance with the general regulations in § 165.33 of this part, entry into, transit through, or anchoring within the security zone by all vessels is prohibited during military outloads, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zone established by this section.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port on VHF channel 16 or VHF channel 21A to seek permission to transit the area. Additionally, the COTP representative may be reached at (619) 683–6470 ext 2. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives.

(c) *Enforcement*. The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the San Diego Harbor Police.

(d) *Notice*. Enforcement of the security zone will be announced via broadcast notice to mariners, local notice to mariners, or by any other means that is deemed appropriate.

(e) *Authority*. In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: April 17, 2003.

**Stephen P. Metruck,**

*Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.*

[FR Doc. 03–11296 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Chapter I

**[OPP–2003–0132; FRL–7302–8]**

**RIN: 2070–AD57**

### Human Testing; Advance Notice of Proposed Rulemaking

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** This advance notice of proposed rulemaking announces EPA's plan to conduct rulemaking about criteria and standards EPA would apply in deciding the extent to which it will consider or rely on various types of research with human subjects to support its actions. This notice also initiates the rulemaking process by requesting public comments and suggestions on a broad range of issues relating to this subject.

**DATES:** Comments must be received on or before August 5, 2003.

**ADDRESSES:** Submit your comments, identified by docket ID number OPP–2003–0132, online at http://www.epa.gov/edocket (EPA's preferred method) or mailed to the Public Information and Records Integrity Branch (PIRIB), (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. For additional submission methods and detailed instructions, go to Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** William L. Jordan, Mail code 7501C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–1049, fax number: (703) 308–4776; e-mail address: jordan.william@epa.gov.

**SUPPLEMENTARY INFORMATION:** This Advance Notice of Proposed Rulemaking (ANPR) is organized into four Units. Unit I. contains ''General Information'' about the applicability of this ANPR, how to obtain additional information, how to submit comments in response to the request for comments, and certain other related matters. Unit II. provides background and historic information pertaining to human subject research. Unit III. describes the rulemaking process, identifies relevant statutory provisions, and requests public comments and suggestions on a broad range of issues related to the Agency's consideration of or reliance on research with human subjects. Unit IV. describes procedures followed in the development of this ANPR and certain statutes and Executive Orders that the public may wish to consider in preparing comments.

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of particular interest to those who conduct testing of substances regulated by EPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0132. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket. Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you

in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0132. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0132. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0132.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0132. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this ANPR.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Introduction

*A. Background on Federal Standards for Conducting Human Research*

Over the years, scientific research with human subjects has provided much valuable information to help characterize and control risks to public health, but its use has also raised particular ethical concerns for the welfare of the human participants in such research as well as scientific issues related to the role of such research in assessing risks. Society has responded to these concerns by defining general standards for conducting human research. In the United States, the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research issued in 1979 ''The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research.'' This document can be found on the web at http://ohrp.osophs.dhhs.gov/humansubjects/guidance/belmont.htm.

For most federal agencies in the United States, the principles of the Belmont Report are implemented through the Common Rule, which was developed cooperatively by some 17 departments and agencies, including EPA, and which guides all research with human subjects conducted or supported by these departments and agencies of the federal government. The Common Rule as promulgated by EPA (40 CFR part 26) has guided human research conducted or supported by EPA since it was put in place in 1991.

More broadly, the international medical research community has developed and maintains ethical standards documented in the Declaration of Helsinki, first issued by the World Medical Association in 1964 and revised several times since then. These standards apply to research on matters relating to the diagnosis and treatment of human disease, and to research that adds to understanding of the causes of disease and the biological mechanisms that explain the relationships between human exposures to environmental agents and disease.

In addition, many public and private research and academic institutions and private companies, both in the United States and in other countries, including non-federal U.S. and non-U.S. governmental organizations, have their own specific policies related to the protection of human participants in research.

Much of the scientific research supporting EPA's actions, including a significant portion of the research with human subjects submitted to the Agency or retrieved by the Agency from

published sources, is conducted by this broader research community, without direct participation or support by the U.S. government. Such research, referred to here as ''third party'' research, while it may be governed by specific institutional policies intended to protect research participants or may fall within the scope of the Declaration of Helsinki, is not subject to the Common Rule. In general, EPA cannot readily determine whether such policies are consistent with or as protective of human subjects as the Common Rule, nor the extent to which such policies or standards have been followed in the conduct of any particular study. Thus, even well-conducted third-party human studies may raise difficult questions for the Agency when it seeks to determine their acceptability for consideration.

*B. Human Research Issues in EPA's Pesticide Program*

Questions about the Agency's consideration of and reliance on third-party human research studies have arisen most notably, but not exclusively, in EPA's pesticides program. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA may require pesticide companies to conduct studies with human subjects, for example, to measure potential exposure to pesticide users or to workers and others who re-enter areas treated with pesticides, and to evaluate the effectiveness of pesticide products intended to repel insects and other pests from human skin. In addition, EPA sometimes encourages other research with human subjects, including tests of the potential for some pesticides--generally those designed for prolonged contact with human skin--to irritate or sensitize human skin, and tests of the metabolic fate of pesticides in the human system. These latter studies typically precede monitoring studies of agricultural workers and others to protect them from exposure to potentially dangerous levels of pesticide residues.

In addition to these kinds of research which have been required or encouraged by EPA, other kinds of studies involving human subjects intentionally exposed to pesticides have occasionally been submitted to the agency voluntarily. Among these voluntarily submitted studies have been tests involving intentional dosing of human subjects to establish a No Observed Adverse Effect Level (NOAEL) or No Observed Effect Level (NOEL) for systemic toxicity of certain pesticides to humans. Before passage of the Food Quality Protection Act (FQPA) in 1996, submission of such studies was rare. EPA considered and relied on human NOAEL/NOEL studies in a few regulatory decisions on pesticides made prior to 1996. Since the passage of FQPA, submission of these types of studies to the Office of Pesticide Programs has increased; the Agency has received some 20 studies of this kind since 1996.

In response to concerns about human testing expressed in a report of a non-governmental advocacy organization, the Environmental Working Group, in July 1998, the Agency began a systematic review of its policy and practice. In a press statement on July 28, 1998, EPA noted that it had not relied on any such studies in any final decisions made under FQPA; this remains true today.

In further response to growing public concern over pesticide research with human subjects, EPA convened an advisory committee under the joint auspices of the EPA Science Advisory Board (SAB) and the FIFRA Scientific Advisory Panel (SAP) to address issues of the scientific and ethical acceptability of such research. This advisory committee, known as the Data from Testing of Human Subjects Subcommittee (DTHSS), met in December 1998 and November 1999, and completed its report in September 2000. Their report is available in the Docket cited above in this ANPR, and on the web at: http://www.epa.gov/science1/pdf/ec0017.pdf

The DTHSS advisory committee heard many comments at their two public meetings, and further comments have been submitted in response to their published report. No clear consensus emerged from the advisory committee process on the acceptability of NOAEL or NOEL studies of systemic toxicity of pesticides to human subjects, and significant differences of opinion remain on both their scientific merit and ethical acceptability. A vigorous public debate continues about the extent to which EPA should accept, consider, or rely on third-party intentional dosing human toxicity studies with pesticides.

*C. EPA's Current Agency-wide Focus on Human Research Issues*

EPA is now interested in addressing these issues more broadly, and in all Agency programs. In December 2001, EPA asked the advice of the National Academy of Sciences (NAS) on the many difficult scientific and ethical issues raised by this debate, and also stated the Agency's interim approach on third-party intentional dosing human subjects studies. The Agency's press release on this subject is on the web at http://yosemite.epa.gov/opa/admpress.nsf/b1ab9f485b098972852562e7004dc686/c232a45f5473717085256b2200740ad4?OpenDocument. At that time the Agency committed that when it receives the NAS report, ''EPA will engage in an open and participatory process involving federal partners, interested parties and the public during its policy development and/or rulemaking regarding future acceptance, consideration or regulatory reliance on such human studies.'' Since making that commitment, EPA has decided to initiate a rulemaking process by issuing this ANPR.

In early 2002, various parties from the pesticide industry filed a petition with the U.S. Court of Appeals for the District of Columbia for review of EPA's December 2001 press release. These parties argued that the Agency's interim approach constituted a ''rule'' promulgated in violation of the procedural requirements of the Administrative Procedure Act and the Federal Food, Drug, and Cosmetic Act. The court has denied motions concerning emergency relief and other matters, briefs have been filed, and oral argument of the merits of the case occurred on March 17, 2003.

Under a contract with EPA, the NAS has convened a committee to provide the requested advice. The committee met in December 2002, and again in January and March 2003. The membership, meeting schedule, and other information about the work of this committee can be found on the NAS website at: http://www4.nas.edu/webcr.nsf/5c50571a75df494485256a95007a091e/9303f725c15902f685256c44005d8931?OpenDocument&Highlight=0,EPA. The committee's final report is due in December 2003.

Notwithstanding these many recent developments concerning human studies, some things have not changed. EPA remains committed to full compliance with the Common Rule for all research with human subjects conducted or supported by the Agency. This body of research has provided many important insights and has contributed significantly to the protection of human health. The Agency will continue to conduct and support such research, and to consider and rely on its results in Agency actions. EPA also remains committed to scientifically sound assessments of the hazards of environmental agents, taking into consideration available, relevant, and appropriate scientific research.

**III. EPA's Rulemaking Process and Request for Public Comment**

EPA intends to undertake notice-and-comment rulemaking on the subject of its consideration of or reliance on research involving human subjects. The Agency will particularly focus on third-party intentional dosing human studies, but recognizes that the principles applicable to third-party studies may also be relevant to studies conducted or supported by the federal government. The first step in this process is this ANPR which calls for comments and suggestions from all interested parties. The next step the Agency would expect to undertake would be to issue a proposed rule for public comment. In developing any proposed rule, EPA will consider the advice in the National Academy of Sciences committee report, along with comments received in response to this ANPR. Comments received on any proposed rule would then be taken into consideration in developing a final rule or policy.

In general, the Agency expects that any rule or policy coming out of this process may do one or more of the following:

- Specify, if and to the extent determined by EPA to be appropriate, whether EPA would accept, consider, or rely on results from particular types of studies involving intentional dosing of human subjects or from human studies with particular characteristics.
- Establish minimum standards relating to the protection of human subjects which would be required to be met in the design and conduct of a study with human subjects, in order for EPA to accept, consider, or rely on the results of the study.
- Establish procedures for ensuring that any minimum standards for the conduct of third-party research with human subjects had been adhered to in the conduct of any such study that EPA intended to accept, consider, or rely on.

*A. Legal Authority*

Section 25(a) of FIFRA gives the Administrator authority to ''prescribe regulations to carry out the purposes of [FIFRA].'' Such a rule would implement EPA's authority to require data in support of registration of pesticides (see, for example, FIFRA sections 3(c)(1)(F) and 3(c)(2)(B)) and to interpret the provision making it unlawful for any person ''to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature and purposes of the test and of any physical and mental health consequences which are reasonably foreseeable therefrom, and (ii) freely volunteer to participate in the test.'' (FIFRA section 12(a)(2)(P)). In addition, section 408(e)(1)(C) of the FFDCA authorizes the Administrator to issue a regulation establishing ''general procedures and requirements to implement this section.''

The Clean Air Act gives EPA general rulemaking authority in 42 U.S.C. 7601(a). The Clean Water Act, 33 U.S.C. 1361, authorizes the Administrator to promulgate regulations necessary to carry out the Agency's functions under that Act. Section 42 U.S.C. 9615 in the Comprehensive Environmental Response, Compensation, and Liability Act authorizes the President to establish regulations to implement the statute; this authority has been delegated to EPA by Executive Order 12580. The Emergency Planning and Community Right-to-Know Act also contains a general rulemaking provision, 42 U.S.C. 11048, authorizing the Administrator to promulgate rules necessary to carry out the Act. The Resource Conservation and Recovery Act specifically authorizes the Administrator to prescribe regulations necessary to carry out EPA's functions under the Act, 42 U.S.C. 6912. The Safe Drinking Water Act contains similar language, authorizing the Administrator to prescribe such regulations ''as are necessary and appropriate'' to carry out EPA's functions under the Act, 42 U.S.C. 300j-9. In addition, EPA has authority under 5 U.S.C. 301 and 42 U.S.C. 300v-1(b).

*B. Request for Comments*

Neither this ANPR nor the specific questions presented below for public comment are intended to indicate that EPA now favors any particular policy approaches regarding the Agency's consideration of or reliance on third-party intentional dosing human studies. Similarly, neither this ANPR nor the specific questions presented below for public comment are intended to indicate that EPA has decided on a particular scope for any potential future rulemaking. Nor is this ANPR intended to impede or otherwise delay any Agency assessments or actions. Rather, this ANPR is designed to encourage public input from all interested parties on a broad range of issues that could help inform any rule or policy that EPA eventually promulgates or issues, respectively.

The Agency fully appreciates the number, the range, and the interconnectedness of the scientific and ethical concerns raised especially by intentional dosing human studies of the wide range of environmental agents addressed by EPA's programs. Reflecting the breadth of issues that have been raised, the Agency has identified specific questions on which it particularly invites comment. These questions are intended to help organize and focus the discussion, but not to constrain it. Commenters should feel free to address any other relevant topics as well.

1. *Applicability of existing standards*—a. Is it appropriate to use a standard intended to guide the conduct of research (e.g., the Common Rule, Declaration of Helsinki, or the Nuremberg Code) to assess the acceptability for review of completed research?

b. Is it appropriate to use a standard intended to guide the conduct of therapeutic or diagnostic medical research or to clarify causes of disease, such as the Declaration of Helsinki, to assess the acceptability for review of other kinds of research without diagnostic or therapeutic intent, conducted with healthy subjects?

c. Should the Agency apply the same standard of acceptability independent of the type of substance tested (e.g., pharmaceutical, pesticide, pathogen, or environmental contaminant)? If not, how might differing standards be applied when a single substance has multiple uses, e.g., as both a pesticide and a drug?

d. Does it matter who maintains a standard, or by what process it is maintained? For example, would it be appropriate for EPA to accept and apply a standard maintained by a private, non-governmental organization, as is the Declaration of Helsinki?

e. Should the Agency extend the requirements of the Common Rule to the conduct of third-party research with human subjects intended for submission to EPA? What are the advantages and disadvantages of conducting a rulemaking or undertaking other Agency action for this purpose alone?

2. *Should the standard of acceptability vary depending on the research design*?—a. Should the Agency apply the same standard of acceptability independent of whether the research design involves intentional exposure? For example, should the same standard apply to research involving intentional exposures to human subjects, to research designed to follow-up accidental exposure, and to studies of individuals occupationally or incidentally exposed?

b. Should the Agency apply the same standard of acceptability independent of the level of exposure of the human subjects? For example, does it matter if the level of exposure to a chemical is below the Reference Dose or other established health standard designed to

protect the general public? Should the same standard apply if intentional exposure to an environmental pollutant occurs at ambient levels, or at elevated levels? If research involves intentional exposure to a pesticide, does it matter if exposure results from use of the pesticide in conformity with approved label directions?

c. Should the Agency apply the same standard of acceptability independent of the pathway of exposure? For example, should the same standard apply when exposure is oral, or dermal, or by inhalation?

d. Should the Agency apply the same standard of acceptability independent of the effects being evaluated? For example, should the same standard apply to a study measuring transitory changes in blood chemistry or levels of a substance in urine that applies to studies measuring longer-lasting changes? Should the same standard apply to a study of localized skin irritation that applies to a study of systemic dermal toxicity? Should the same standard apply to studies measuring organoleptic effects, such as taste or smell, that applies to studies of toxic effects? Should the same standard apply to measurements of toxic effects and to measurements through genomic or proteomic assessments?

e. Should conduct of research in compliance with the provisions of the Common Rule or another standard for the protection of human subjects be accepted as evidence of its ethical acceptability?

f. Should the Agency consider whether research has been performed consistent with an EPA guideline for data development in determining its acceptability? For example, EPA has published guidelines for certain kinds of human studies required for pesticide registration; should conduct of a required study in compliance with an EPA guideline be accepted as evidence of its acceptability?

g. Should the Agency apply the same standard of acceptability independent of a study's statistical power?

h. Should the Agency apply the same standard of acceptability whether or not a human study design is able to measure the same endpoints in humans that have been observed in animal testing of the same substance? For example, if the most sensitive adverse effects shown in animal studies have been detected through histopathological evaluation of brain tissue, is subsequent research involving intentional exposure of human subjects acceptable?

i. Should the Agency apply the same standard of acceptability to intentional dosing studies independent of whether there are alternative methods of obtaining data of comparable scientific merit that would not require deliberate exposure of humans? If not, to what extent, if any, should the cost of the alternate method be a factor?

j. What special considerations, if any, should the Agency apply in judging the acceptability of studies when some or all of the subjects are from populations likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons?

3. *Should the standard of acceptability vary depending on the provenance of the research*?—a. Should the Agency apply the same standard of acceptability without regard to who or what organization sponsors or supports the research? Since 1991, human research conducted or supported by the U.S. government has been subject to the Common Rule. Should the same standard apply to research conducted or supported by others? Should a single standard apply independent of whether the sponsor is a commercial enterprise, a non-profit organization, another government in the United States (such as state, tribal, or local), or the government in another country? Should the same standard apply without regard to the test sponsor's interest in a regulatory matter that could be affected by EPA's consideration of the data?

b. Should the Agency apply the same standard of acceptability independent of who or what organization conducts the research? For example, a research organization--public or private--holding a ''Federal-Wide Assurance'' from the Department of Health and Human Services's Office of Human Research Protections usually promises to comply with the Common Rule in all its human research. Should third-party work conducted by a research organization holding a Federal-Wide Assurance be assessed by the same standard that applies to other third-party human research?

c. Should the Agency apply the same standard of acceptability without regard to where the research was conducted? For example, does it matter whether research is conducted entirely in the United States or partially in the United States? If it is conducted outside the United States, does it matter in what country it is conducted? What are the advantages and disadvantages of judging the acceptability of human studies based on a single uniform standard versus prevailing local standards (e.g., in different countries)?

d. Should the Agency apply the same standard of acceptability without regard to the reasons the research was conducted? If not, how might the Agency determine intent?

e. Should the Agency apply the same standard of acceptability to submitted research without regard to who submitted it? For example, should the same standard apply to submissions from regulated industry, from public interest groups, from the public, or from other governments? Should the Agency apply the same standard of acceptability independent of whether the study was submitted voluntarily, or in response to a particular regulatory requirement of EPA?

f. Should the Agency apply the same standard of acceptability to human research which is not submitted, but which the Agency obtains at its own initiative from the scientific literature or other sources, independent of how or where EPA obtains it?

4. *Should the standard of acceptability vary depending on EPA's potential use of the data*?—a. Should the Agency apply the same standard of acceptability independent of whether the results of the study would support a more or less stringent regulatory position? For example, should the same standard apply whether the data indicate that the substance tested is more risky or less risky than is indicated by other available data?

b. Should the Agency apply the same standard of acceptability without regard to how EPA intends to use the results, e.g., to reduce or remove the traditional tenfold interspecies uncertainty factor, to provide an endpoint for use in calculating a Reference Dose or Reference Concentration for the test substance, to provide a dose-response function for use in quantitative risk assessment, or for some other purpose?

5. *Should the standard of acceptability vary depending on EPA's assessment of the risks and benefits of the research to the subjects or to society*?—a. Should the Agency apply a standard of acceptability based on a comparison of the anticipated benefits of the research in relation to the risks to human subjects, provided the risks are minimized and informed consent is obtained?

b. Should the Agency independently assess the risks of the research to the subjects and the benefits of the research to the research subjects or to society, or should it defer to the judgment of Institutional Review Boards or similar oversight panels?

c. If EPA were to assess independently the risks and benefits of human research, on what range of information should it base its assessment? How might EPA obtain

information relevant to such an assessment?

6. *How should the Agency implement standards of acceptability*?—a. To what extent and how should the submitter of research with human subjects to EPA be required to document or otherwise demonstrate compliance with appropriate standards for the protection of human research subjects, e.g., fully informed and fully voluntary participation, and independent oversight of research design and conduct by an Institutional Review Board or comparable entity?

b. How should the Agency determine compliance with an appropriate standard for human research data which is not submitted, but which it obtains from the scientific literature or other sources?

c. To what extent should new standards be applied to research which has already been conducted, or is underway? Should a different standard be applied to such research? Does fairness require a period of transition to any new rule or standards of acceptability, or do other considerations override that factor?

d. Should the Agency apply the same standard of acceptability to research already submitted to or obtained by EPA and to research newly submitted to or obtained by EPA? Does it matter if the submitted research was conducted for the specific regulatory purpose at hand or for other purposes (even though the study was conducted after EPA issued a policy on human testing)? Does fairness require a period of transition to any new rule or standards of acceptability, or do other considerations override that factor?

e. Is rulemaking needed at all? Would it be better to address the issues surrounding acceptance of human research, or some of them, by other means, such as policy statements or internal guidelines?

## IV. Statutory and Executive Order Reviews

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this ANPR is a ''significant regulatory action'' under section 3(f) of the Executive Order. The Agency therefore submitted this document to OMB for the 10–day review period afforded under this Executive Order. Any changes made in response to OMB comments during that review have been documented in the public docket as required by the Executive Order.

Since this ANPR does not impose any requirements, and instead seeks comments and suggestions for the Agency to consider in developing a subsequent notice of proposed rulemaking, the various other review requirements that apply when an agency imposes requirements do not apply to this action.

As part of your comments on this ANPR you may include any comments or information that you have regarding these requirements. In particular, any comments or information that would help the Agency to assess the potential impact of a rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*); to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note); or to consider environmental health or safety effects on children pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency will consider such comments during the development of any subsequent notice of proposed rulemaking as it takes appropriate steps to address any applicable requirements.

### List of Subjects

Environmental protection, Protection of human research subjects.

Dated: April 29, 2003.

**Christine T. Whitman,**

*Administrator.*

[FR Doc. 03–11002 Filed 5–6–03; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MD136–3091b; FRL–7484–1]**

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to State II Vapor Recovery at Gasoline Dispensing Facilities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of amending the regulations pertaining to Stage II Vapor Recovery at Gasoline Dispensing Stations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by June 6, 2003.

**ADDRESSES:** Written comments should be addressed to Makeba Morris, Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: April 9, 2003.

**James W. Newsom,**

*Regional Administrator, Region III.*

[FR Doc. 03–11184 Filed 5–6–03; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[PA188–4205b; FRL–7482–6]**

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and $NO_X$ RACT Determinations for Two Individual Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) for two major sources of volatile organic compounds (VOC) and nitrogen oxides ($NO_X$) located in Pennsylvania. The two major sources are Dominion Trans Inc., and Textron Lycoming. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by June 6, 2003.

**ADDRESSES:** Written comments should be addressed to Makeba Morris, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, Pennsylvania's Approval of VOC and $NO_X$ RACT Determinations for Two Individual Sources, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: April 4, 2003.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 03–11182 Filed 5–6–03; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 03–1156; MM Docket No. 02–301, RM–10578]**

### Radio Broadcasting Services; Broken Bow, OK

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** In response to a *Notice of Proposed Rule Making,* 67 FR 64598 (October 21, 2002), this *Report and Order* dismisses the Petition for Rule Making in MM Docket No. 02–301 proposing to allot Channel 232A to Broken Bow, Oklahoma. The petitioner had requested this dismissal.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 02–301, adopted April 15, 2003, and released April 17, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03–11225 Filed 5–6–03; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 572

**[Docket No. NHTSA–03–15089]**

**RIN 2127–AI58**

### Anthropomorphic Test Devices; Hybrid III 6-Year-Old Weighted Child Test Dummy

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to amend 49 CFR part 572 by adding a weighted version of the current Hybrid III six-year-old child size dummy (H-III6C). The weighted dummy would weigh 62 pounds, ten pounds more than the H-III6C dummy. The drawings and specifications for the weighted dummy would be the same as those for the H-III6C dummy, except for added masses at the thoracic spine and at the base of the lumbar spine. The agency issued an NPRM in May 2002 proposing to use the weighted dummy in the agency's compliance tests of child restraint systems recommended for use by larger children, *i.e.*, children from 50 to 65 pounds. Today's document proposes specifications and calibration procedures for the weighted test dummy described in that NPRM.

**DATES:** Comments must be received by July 7, 2003.

**ADDRESSES:** Comments should refer to the docket number above and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 10 a.m. to 5 p.m. See Supplementary Information section for electronic access and filing addresses.

**FOR FURTHER INFORMATION CONTACT:** For technical and policy issues, Stan Backaitis, NHTSA Office of Crashworthiness Standards, at 202–366–4912.

For legal issues, Deirdre R. Fujita, NHTSA Office of the Chief Counsel, at 202–366–2992.

Both officials can be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

### *A. The Hybrid III 6-Year-Old Test Dummy*

On January 13, 2000, NHTSA issued a final rule establishing specifications and test procedures for a new, more advanced six-year-old child test dummy (H-III6C).[1] The agency determined that a new six-year-old dummy was needed to evaluate the risks of air bag deployment for children, particularly for unrestrained children. The agency adopted the H-III6C dummy because it had a more humanlike impact response than the six-year-old dummies that existed at that time, and because it allowed the assessment of the potential for more types of injuries. The agency also concluded that the H-III6C dummy would provide greater and more useful information in a variety of automotive impact environments to better evaluate child safety.

### *B. The Need for a Heavier Child Dummy*

Research has shown that children, even those older than six years, do not fit properly in adult vehicle seats, and that adult belt restraint systems cannot be properly applied over the load bearing structural parts of children's torsos.[2] Moreover, both the National Transportation Safety Board (NTSB)[3] and the ''Blue Ribbon Panel II: Protecting Our Older Child Passengers''[4] have recommended that older children be restrained in child safety seats, booster seats, or safety belts appropriate for their size and weight. Both recommended also that a universally acceptable crash test dummy approximating a ten-year-old child should be developed. In addition, child restraint manufacturers, while attempting to develop specialized child restraint systems and booster seats for larger children, have found themselves hampered in this effort by not having an appropriately sized dummy.

In March 2000, NHTSA responded to these needs by asking the Society of Automotive Engineers (SAE) to take the lead in developing a Hybrid III ten-year-old child size dummy. This effort received a further boost from Congress on November 1, 2000, when the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act was enacted.[5] Section 14 of the TREAD Act directs NHTSA to consider whether to require the use of anthropomorphic test devices that ''represent a greater range of sizes of children, including the need to require the use of an anthropomorphic test device that is representative of a ten-year-old child * * *.'' Further, on December 4, 2002, Congress enacted Pub. L. 107–318 (Dec. 4, 2002; 116 Stat. 2772) (''Anton's Law''). Section 4 of Pub. L. 107–318 directs that—

> (a) Not later than 24 months after the date of the enactment of this Act, the Secretary shall develop and evaluate an anthropomorphic test device that simulates a 10-year-old child for use in testing child restraints used in passenger motor vehicles.
>
> (b) Within 1 year following the development and evaluation carried out under subsection (a), the Secretary shall initiate a rulemaking proceeding for the adoption of an anthropomorphic test device as developed under subsection (a).

Responding to NHTSA's call, the SAE designed and developed a Hybrid III ten-year-old child size dummy weighing approximately 76 pounds. In accordance with the agency's rulemaking and research plans and in furtherance of Section 4 of Pub. L. 107–318, NHTSA is evaluating the dummy for incorporation into Part 572. However, the evaluation will take time, as necessary design modifications are usually necessary for a dummy to be suitable for incorporation into 49 CFR part 572. In the meantime, child restraint system manufacturers will still need a dummy approximating children in the seven to eight year old age bracket, *i.e.*, children above 50 pounds. To meet this need, the agency is considering a weighted version of the current H–III6C dummy, one that weighs approximately 62 pounds instead of the 52-pound weight of the H–III6C dummy.

### *C. NPRM on Standard No. 213*

The agency issued an NPRM in May 2002 proposing a number of changes to Standard No. 213 in response to Section 14 of the TREAD Act, including a proposal to use the weighted dummy in the agency's compliance tests of child restraint systems recommended for use by larger children, *i.e.*, children from 50 to 65 pounds. (67 FR 21806; May 1, 2002; Docket No. 02–11707.) The use of the dummy was viewed as an interim measure until such time that the Hybrid III ten-year-old dummy becomes available. The agency proposed that the dummy would be used in Standard No. 213's dynamic testing to measure the forces that are sustained by the dummy's head, neck, and chest when restrained by the child restraint in a simulated crash. Standard No. 213 would require the child restraint to limit the forces to specified levels. In addition, it was proposed that the dummy would be used to assess the restraint's ability to maintain structural integrity in a crash when the dummy is restrained in it, and to limit excursion of the dummy's head, torso and knees.

Today's document proposes to incorporate into Part 572 the weighted six-year-old dummy that was described in the May 2002 NPRM. That dummy has extensive instrumentation to measure the potential for injuries to the head, the upper and lower ends of the neck, and the chest, as well as other areas of the dummy. Comments were requested and received by the agency on the suitability of the weighted, instrumented dummy for use in Standard No. 213 compliance tests of booster seats and other child restraints recommended for use by children weighing over 50 lb.

Some commenters on the May 2002 NPRM expressed concerns or questions about using the dummy's injury assessment capabilities in Standard No. 213 compliance tests. Some commenters suggested that the weighted dummy does not adequately represent a child in the seven- to eight-year-old age bracket, and that the dummy should thus not be used in the compliance tests because it

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[1] 65 FR 2059.

[2] Kathleen DeSantis Klinich, *et al.*, ''Study of Older Child Restraint/Booster Seat Fit and NASS Injury Analysis,'' Technical Report, DOT HS 80 248, NHTSA/VRTC, November 1994.

[3] NTSB, Safety Recommendation H–96–25, Study on Advanced Air Bags, Safety Belts and Child Restraint Issues, September 1996. A copy of this document has been placed in the docket.

[4] Recommendations of the Blue Ribbon Panel II: Protecting Our Older Child Passengers, March 15, 1999. The panel was announced by Transportation Secretary Rodney Slater and Ricardo Martinez, M.D., NHTSA Administrator, on November 19, 1998, with a mission of recommending ways to increase the use of age- and size-appropriate occupant restraints by children ages four through fifteen whenever they are riding in a motor vehicle. These recommendations can be found at *http://www.actsinc.org/whatsnew_6.cfm*.

[5] Public Law 106–414, 114 Stat. 1800.

would add little, if anything, to child passenger safety. Some suggested that the agency should focus on developing the Hybrid III ten-year-old dummy instead. Others suggested that the weighted six-year-old dummy be used only to assess the structural integrity of child restraints, and not to assess the crash forces imposed in the dynamic test.

The agency is considering all the comments on the May 2002 NPRM and will respond to them in the follow-on document to the NPRM. Today's NPRM proposes specifications for the weighted dummy simply to complement the May 2002 NPRM, *i.e.*, this document completes the dummy specifications called for in the May NPRM. By issuing this document, the agency does not intend to imply that it has concluded that the instrumented dummy will be fully used in Standard No. 213 compliance tests, with all its measurement capabilities. A final rule on the use of the weighted dummy in Standard No. 213 compliance tests, assuming the agency adopts such a provision in a final rule, will address all issues concerning the full or limited use of the dummy. Further, a final rule adopting the dummy into Part 572 will likely parallel NHTSA's final rule concerning use of the dummy in Standard No. 213.

## II. Alternatives Considered

### *A. Objectives for the Weighted Dummy*

The agency defined the following objectives for the weighted six-year-old child size dummy:

1. Develop a method for increasing the weight of the current H–III6C dummy from 52 pounds to over 60 pounds.

2. The system used to add weight to the H–III6C dummy must not interfere with the restraint system being used, and must not distort the kinematics and impact response of the dummy.

3. The weighted dummy must have sufficient durability in the intended impact exposures.

4. The weighted dummy must have repeatability and reproducibility in calibration and sled tests comparable to that of the H–III6C dummy.

5. The weighted dummy must be backed up with sufficient design and performance data to support its incorporation into 49 CFR part 572.

6. The weighted dummy must be useful in assessing the structural integrity of child restraints in dynamic testing.

### *B. Weighting Concepts*

The agency evaluated several weighting concepts for developing a weighted H–III6C dummy. Initially, the agency placed a weighted vest on the dummy. However, upon inspecting this system, the agency determined that use of such a vest would be unacceptable in compliance testing. Since the weights are not rigidly attached to the dummy, they could rattle or even slap during dynamic tests, possibly interfering with the dummy's instrumentation responses. In addition, the vest, loaded with weighting materials, was somewhat bulky. The agency was concerned that this bulkiness could affect the positioning of the dummy and compromise the effectiveness of the tested restraint system.

NHTSA then considered mounting ballasts directly on the dummy's interior structure. The agency designed carbon steel masses (about 9 pounds) that could be rigidly mounted on the dummy's spine and pelvis. However, this resulted in the elevation of the upper torso by 1 inch. The agency determined that a more uniform distribution of the added weight between the upper and lower torso halves, and less elevation of the upper torso with respect to the lower torso, were necessary.

The agency discovered that a more uniform mass distribution, and a lowering of the upper torso, could be achieved through the use of a dense Tungsten alloy material. The increased density of the Tungsten alloy allowed each of the weights to be reduced in size as compared to the carbon steel weights. The dummy's seated height was increased by only 0.7 inch, while the carbon steel weights increased the dummy's seated height by 1 inch. The agency also was able to design the Tungsten alloy weights to distribute the added weight more uniformly between the upper and lower torso halves. The Tungsten alloy material allowed the agency to increase the added weight of the bottom of the lumbar spine (hereinafter referred to as ''pelvis'') from 3.8 pounds to 4.9 pounds while maintaining the thoracic spine weight increase at 5.2 pounds.[6]

The agency's preliminary testing and evaluation of the dummy with the Tungsten alloy weights attached to the thoracic spine and pelvis has indicated responses comparable to the responses of the H–III6C dummy. Therefore, the agency has tentatively concluded that attaching Tungsten alloy weights to the H–III6C dummy's thoracic spine and pelvis met the agency's objectives for a weighted six-year-old child size dummy outlined above.

### *C. Evaluation of the Weighted Dummy*

The agency subjected the weighted dummy to two types of impact evaluations in the laboratory environment: component calibration tests and sled tests.

Component calibration tests were conducted to compare the performance of the weighted dummy with that of the H–III6C dummy. The agency followed the calibration test procedures specified for the H–III6C dummy in 49 CFR part 572 subpart N. Since masses were added to the dummy's upper and lower torso, the agency limited its evaluation of the weighted dummy for certification responses to the thorax impact (specified in 49 CFR 572.124) and torso flexion (49 CFR 572.125) tests. Since the added weights would not influence the head drop, neck flexion and extension, and knee impact calibration tests, the agency did not conduct these tests with the weighted dummy.

The agency conducted ten high acceleration (HYGE) sled tests with both the H–III6C and the weighted dummies in seating configurations with adult restraint systems and belt positioning booster seats. All tests were performed using the Standard No. 213 pulse (24 G, 30 mph) and sled mounted seating buck. The dummies were seated in Century Breverra Metro and Graco Cherished Cargo booster seats and restrained with a 1999 Pontiac Grand Am rear seat lap/shoulder belts for all tests. One set of tests with the Century Breverra Metro booster seats was performed without belt retractors.

1. Calibration Tests

To evaluate the dummy's repeatability, structural integrity, and durability, the agency performed seven thorax impacts with the weighted dummy. The first four thorax calibration tests were conducted prior to a series of six Standard No. 213 sled tests. Three additional tests were conducted after the sled tests. The test results are detailed in NHTSA's Technical Report entitled ''Evaluation of the Weighted Hybrid III Six-Year-Old Child Dummy'' (October, 2001, Docket No. NHTSA–2002–11707–2). The results indicate the following responses.

The chest deflection responses of the weighted dummy met the calibration limits for the H–III6C dummy in all tests. However, the average chest deflection for the weighted dummy was approximately 41 mm, which is 1 mm below the target deflection of 42 mm

[6] The spine weights consist of two 2.6-pound plates, one on each lateral side of the thoracic spine.

specified for the H–III6C dummy. Since these results were based upon only one dummy, the agency has tentatively concluded that it should retain the 38–46 mm chest deflection specification.

The peak pendulum force responses in the weighted dummy's thoracic deflection range of 38–46 mm met the specifications for the H–III6C dummy in all tests. However, the average response was close to the upper limit of the specified corridor. Accordingly, the data suggest that, to assure better centering of the response specification, the H–III6C dummy corridor be changed from 1150–1380 N to 1225–1455 N for the weighted dummy.

The H–III6C specifications also require that the peak pendulum force during the thoracic deflection range of 12.5–38 mm not exceed by more than 5 percent the value of the peak force during the deflection range of 38–46 mm. The weighted dummy did not consistently meet this specification during NHTSA's testing. Accordingly, the data suggest that the H–III6C dummy limit be changed from 5 percent to 10 percent for the weighted dummy.

The internal hysteresis responses of the weighted dummy met the specifications for the H—III6C dummy in all tests. Accordingly, the data suggest that the H–III6C dummy specification for internal hysteresis of 65–85 percent be retained for the weighted dummy.

2. Torso Flexion Tests

The agency performed six torso flexion tests with the weighted dummy, two tests prior to and four following a series of six Standard No. 213 sled tests. The test results are detailed in the October 2001 Technical Report noted above. The results indicate that the durability and structural integrity of the weighted dummy were not compromised by the added weight during the test series. However, the test data indicate that the weighted dummy did not meet the established flexion force corridors for the H–III6C dummy. The agency's torso flexion test responses with the weighted dummy also indicate the following.

The initial average torso setup angle for the weighted dummy in the absence of external support was 31.2 degrees. This is higher than the maximum value of 22 degrees specified for the H–III6C dummy. The additional mass located on the spine box of the weighted dummy is responsible for the increase in the initial torso setup angle. Accordingly, the data suggest that the following specification be added for the weighted dummy torso flexion test:

> Remove the external support and wait two minutes. Measure the initial orientation of the Torso reference plane of the seated dummy as shown in Figure S2. This initial torso orientation angle may not exceed 32 degrees.

The agency also notes that the initial torso angle exhibited very good repeatability, with a coefficient of variation (CV) of 4.1 percent.

The weighted dummy torso in 45-degree flexion tests yielded an average resistance force of 103 N (23.2 lbf) with a standard deviation of 4 N (0.9 lbf). This is significantly lower than the resistance force of 173.5 ± 26.5 N (39 ± 6 lbf) specified for the H–III6C dummy. Accordingly, the data suggest that the H–III6C dummy resistance force specification be changed from 173.5 ± 26.5 N (39 ± 6 lbf) to 105 ± 20 N (23 ± 4.5 lbf) for the weighted dummy.[7] The agency also notes that the weighted dummy exhibited very good repeatability of resistance force in the flexion tests, yielding a CV of 3.8 percent.

The H–III6C dummy specifications require the torso to return within 8 degrees of the initial torso position upon removal of the flexion force. The weighted dummy met this specification in all tests. Accordingly, the data suggest that this specification be retained for the weighted dummy.

3. Sled Tests

The agency conducted HYGE sled tests using the Standard No. 213 pulse (24 G, 30 mph). The sled buck was equipped with a Standard No. 213 bench seat. The H–III6C and weighted dummies were seated side by side in Century Breverra Metro booster seats and restrained with 1999 Pontiac Grand Am rear seat lap/shoulder belts for all the sled tests. No shoulder belt routing clips or top tethers were used with any of the booster seats. To determine possible variability that may occur with shoulder belt retractors, the agency performed three tests with each dummy in the Century Breverra Metro restraint system both with and without the shoulder belt retractors.

The response data of the H–III6C and weighted dummies are summarized in the table below. The CV for most of the measurements listed indicates relatively comparable responses for the two dummies. Differences, such as higher chest deflection and higher belt loading for the weighted dummy, can be explained by the weighted dummy's increased mass. The shapes of the response curves, found in the October 2001 Technical Report, reflect reasonably comparable tracking of the loading responses vs. time for the same dummy seating and restraint configuration.

H–III6C AND WEIGHTED DUMMIES' RESPONSES IN BOOSTER SEATS

| | Century Breverra Metro without shoulder belt retractor | | Century Breverra Metro with shoulder belt retractor | |
|---|---|---|---|---|
| | H-III6C dummy | Weighted dummy | H-III6C dummy | Weighted dummy |
| HIC 15: | | | | |
| Average | 241 | 177 | 303 | 261 |
| Percent CV | 5.2 | 9.5 | 4.9 | 4.6 |
| HIC Unlimited: | | | | |
| Average | 657 | 554 | 733 | 695 |
| Percent CV | 7.6 | 4.5 | 4.4 | 7.3 |
| Nij: | | | | |
| Average | 1.01 | 0.83 | 0.93 | 0.93 |
| Percent CV | 10.9 | 8.6 | 7.5 | 5.9 |
| Neck Peak Tension (N): | | | | |
| Average | 2,455 | 1,858 | 2,281 | 2,276 |
| Percent CV | 22.4 | 13.0 | 7.9 | 15.9 |

[7] Since NHTSA had to base this proposed performance range specification on data from only a single dummy, the agency used 5 standard deviations to calculate the upper and lower limits. The agency believes that this range is comparable to that for the H–III6C and will be sufficient to accommodate the flexion responses from other dummy tests in the future.

H–III6C AND WEIGHTED DUMMIES' RESPONSES IN BOOSTER SEATS—Continued

| | Century Breverra Metro without shoulder belt retractor | | Century Breverra Metro with shoulder belt retractor | |
|---|---|---|---|---|
| | H-III6C dummy | Weighted dummy | H-III6C dummy | Weighted dummy |
| Chest Deflection (mm): | | | | |
| Average | 29.8 | 38.0 | 29.0 | 36.6 |
| Percent CV | 5.4 | 7.9 | 10.5 | 5.0 |
| Chest Acceleration (g): | | | | |
| Average | 45.93 | 48.58 | 50.15 | 49.23 |
| Percent CV | 10.9 | 6.9 | 1.1 | 7.7 |
| Shoulder Belt Load (N): | | | | |
| Average | 4,486 | 5,498 | 4,632 | 5,770 |
| Percent CV | 10.8 | 7.2 | 2.3 | 4.3 |
| Head Excursion (mm): | | | | |
| Average | 494 | 483 | 523 | 492 |
| Percent CV | 5.1 | 3.1 | 0.7 | 2.3 |
| Knee Excursion (mm): | | | | |
| Average | 630 | 652 | 641 | 670 |
| Percent CV | 2.4 | 0.8 | 1.0 | 3.0 |

Both the Head Injury Criteria (HIC) 15 and HIC unlimited average values were lower for the weighted dummy than for the H–III6C dummy. The weighted dummy measured average HIC 15 values of 177 and 261 for tests without and with a shoulder belt retractor, respectively, while the H–III6C dummy measured average values of 241 and 303. The weighted dummy measured average HIC unlimited values of 554 and 695 for tests without and with a shoulder belt retractor, respectively, while the H–III6C dummy measured average values of 657 and 733. It is to be noted that both dummies recorded higher HIC averages when a shoulder belt retractor was used. The agency believes this is due to the sudden jerking loads imposed on the dummies when the retractor locks.

Neck tension and neck injury criteria (Nij) averages also were lower for the weighted dummy than for the H–III6C dummy in tests with and without shoulder belt retractors. Without a shoulder belt retractor, the weighted dummy measured an average Nij value of 0.83 and a peak neck tension of 1858 N (418 lbf), while the H–III6C dummy measured an average Nij value of 1.01 and a peak neck tension of 2455 N (552 lbf). With a shoulder belt retractor, both the weighted dummy and the H–III6C dummy measured an average Nij value of 0.93, and their peak neck tension values were similar as well: 2276 N (512 lbf) for the weighted dummy and 2281 N (513 lbf) for the H–III6C dummy. Based on these responses, the agency has tentatively concluded that the weighted dummy will produce either very similar or somewhat lower neck response values than those of the H–III6C dummy.

The weighted dummy also measured a greater average chest deflection than the H–III6C dummy in tests without and with a shoulder belt retractor. In tests without a retractor, the weighted dummy average chest deflection was 8.2 mm greater than the H–III6C dummy average (38.0 mm compared to 29.8 mm). In tests with a retractor, the weighted dummy average chest deflection was 7.6 mm greater than the H–III6C dummy average (36.6 mm compared to 29.0 mm).

The weighted dummy recorded higher shoulder belt loads than the H–III6C dummy. The weighted dummy measured average shoulder belt loads of 5498 N and 5770 N in tests without and with a retractor, respectively, while the H–III6C dummy measured average loads of 4486 N and 4632 N. The agency believes that the weighted dummy's higher average chest deflection and shoulder belt loads can be attributed to greater torso mass.

The weighted dummy average chest acceleration was slightly greater than the H–III6C dummy average in tests without a retractor (48.58 g compared to 45.93 g). However, in tests with a retractor, the H–III6C dummy average chest acceleration was slightly greater than the weighted dummy average (50.15 g compared to 49.23 g).

The weighted dummy average forward head excursion value was 11 mm lower than the H–III6C dummy average value (483 mm compared to 494 mm) in tests without a retractor. In tests with a retractor, the weighted dummy average head excursion value was 31 mm less than the H–III6C dummy average value (492 mm compared to 523 mm).

Conversely, the weighted dummy average knee excursion value was 22 mm greater than the H–III6C dummy average value in tests without a retractor (652 mm compared to 630 mm). In tests with a retractor, the weighted dummy average knee excursion value was 29 mm greater than the H–III6C dummy average value (670 mm compared to 641 mm).

The head kinematics during the sled tests were similar for both dummies. The chins of both dummies exhibited contact into the chests in all tests. Furthermore, both dummies tended to shift into the ''pike'' position (legs and torso pitching forward) during the rebound response. However, this leg flexion did not seem to have a significant bearing on the dummies' performance.

4. Overall Assessment

NHTSA's evaluation of the two dummies has led the agency to the following tentative conclusions.

The weighted dummy response to thorax impacts and torso flexion tests was slightly different from that of the H–III6C dummy. Accordingly, the agency has tentatively concluded that to better fit the weighted dummy's response within the calibration corridors, the response boundaries for thorax impact and torso flexion would need to be slightly adjusted. However, the agency believes that the performance corridors for the head drop, neck flexion and extension, and knee impact tests would require no alteration.

The weighted dummy response to thorax impacts and torso flexion tests were similar before and after a series of six sled tests using the Standard No. 213 pulse. These tests indicate that the consistency of the dummy's impact

response was not affected by the impact exposures during the sled tests.

The agency noted no structural integrity, durability, or noise and vibration issues during component and sled testing of the proposed weighted dummy.

In identical test environments, both the weighted dummy and the H–III6C dummy produced relatively comparable responses when the effects of the weighted dummy's increased mass in the upper and lower torso were taken into account.

Average HIC and neck tension values were lower for the weighted dummy than for the H–III6C dummy, while average chest deflection and shoulder belt loads were greater for the weighted dummy than for the H–III6C dummy.

HIC values were greater for both dummies when a shoulder belt retractor was used. Shoulder belt load averages and chest accelerations also increased slightly when a retractor was used.

The two dummies exhibited similar kinematics during sled testing. Chin-to-chest contact was observed in all tests with both dummies. No contact between the head and knees was detected in any of the tests. The dummies appeared to interface the structure of the child restraints in a similar manner.

## III. Agency Proposal

Based on the results of the test and evaluation program discussed above, the agency has tentatively concluded that the weighted dummy is sufficient for evaluating the dynamic performance of child restraint systems designed for children over 50 pounds. If Standard No. 213 is amended to apply to child restraints for children over 50 lb as proposed in the May 2002 NPRM, the weighted dummy should be able to serve the interim needs of the agency until the Hybrid III ten-year-old size dummy is ready for incorporation. Accordingly, the agency is proposing to incorporate the weighted six-year-old size dummy into 49 CFR part 572 as subpart S.

The drawings and specifications for the weighted dummy would be the same as the drawings and specifications for the H–III6C dummy in 49 CFR part 572 subpart N, except for the following differences.

First, the drawings for the weighted dummy's upper torso assembly and lower torso assembly would be changed to include the spine box weighting plates and pelvis weighting spacer.

Second, in the thorax assembly and test procedure specifications (49 CFR 572.124(b)(1)); the peak force specification within the specified compression corridor would be changed from 1150–1380 N (259–310 lbf) to 1225–1455 N (275–327 lbf); and the peak force specification after 12.5 mm (0.5 in) of sternum displacement would be changed from not more than 5 percent of the value of the peak force measured within the required displacement limit to not more than 10 percent of that value.

Third, in the upper and lower torso assemblies specifications (49 CFR 572.125(b)(1)), the specification for the force applied as shown in Figure S2 would be changed from 147–200 N (33–45 lbf) to 85–125 N (18.5–27.5 lbf).

Fourth, in the upper and lower torso assemblies test procedure specifications (49 CFR 572.125(c)(5)), the initial torso orientation angle specification would be changed from 22 degrees to 32 degrees.

A copy of the Procedures for Assembly, Disassembly, and Inspection (September 2002) for the dummy, and copies of the Parts List and Drawings for the H–III6CW, Alpha Version (September 13, 2002) can be found in the docket for this NPRM.

## IV. Costs

The agency estimates that the base cost of the new weighted six-year-old child size dummy would be $31,170. The cost of an uninstrumented H–III6C dummy is approximately $30,000.[8] The cost difference of $1,170 is as follows: raw tungsten alloy materials for the weights is approximately $270 for the lumbar spacer weight and $240 for each of the two spine weights. The fabrication of the parts requires approximately 12 hours of machinist labor at a cost of $35 per hour, for a total of $420. Instrumentation would add approximately $25,000 to $41,000 to the cost of the dummy, depending on the amount of data desired.

## V. Benefits

At this time, the agency has not quantified any benefits to the public from this rulemaking. The availability of a weighted six-year-old child size dummy would provide a more suitable, repeatable, and objective test tool to the automotive safety community for development of improved safety environments for older children in motor vehicle crashes than the unweighted dummy. It also would facilitate the future certification of booster seats and child restraint systems designed for children up to approximately 65 pounds.

[8] *See* the H–III6C dummy final rule at 65 FR 2064 (January 13, 2000).

## VI. Lead Time

The agency believes that lead time is not a major factor for upweighting the H–III6C. The addition of the dummy to Part 572 will not affect manufacturers' compliance obligations with respect to the Federal motor vehicle safety standards.

## VII. Rulemaking Analyses and Notices

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's (DOT) regulatory policies and procedures (44 FR 11034, February 26, 1979). The Office of Management and Budget did not review this rulemaking document under Executive Order 12866. This rulemaking action has been determined not to be significant under the DOT's Regulatory Policies and Procedures.

This document proposes to amend 49 CFR part 572 by adding design and performance specifications for a weighted six-year-old child dummy that the agency may use in the Federal motor vehicle safety standards. If this proposed rule becomes final, it would affect only those businesses that choose to manufacture or test with the dummy. It would not impose any requirements on anyone.

The cost of an uninstrumented H-III6C dummy is approximately $30,000.[9] The cost of the raw tungsten alloy materials for the weights is $270 for the lumbar spacer weight and $240 for each spine weight. The fabrication of the parts requires approximately 12 hours of machinist labor at a cost of $35 per hour. Accordingly, the agency estimates that the cost of an H–III6CW dummy is $31,170. Instrumentation would add approximately $25,000 to $41,000 to the cost of the dummy, depending on the amount of instrumentation.

Because the economic impacts of this proposal are so minimal, no further regulatory evaluation is necessary.

*B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking under the Regulatory Flexibility Act. I hereby certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. The proposed amendment would not impose or rescind any requirements on anyone. Therefore, it would not have a significant economic impact on a substantial number of small entities.

*C. National Environmental Policy Act*

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

[9] *See* the H–III6C dummy final rule at 65 FR 2064 (January 13, 2000).

*D. Executive Order 13132 (Federalism)*

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

NHTSA has analyzed this proposed amendment in accordance with the principles and criteria set forth in Executive Order 13132. The agency has determined that this rule does not have sufficient federalism implications to warrant consultation and the preparation of a Federalism Assessment.

*E. Civil Justice Reform*

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

*F. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid control number from the Office of Management and Budget (OMB). This proposed rule would not have any requirements that are considered to be information collection requirements as defined by the OMB in 5 CFR part 1320.

*G. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

The H–III6C dummy, which is the dummy upon which the weighted dummy is based, was developed under the auspices of the SAE. All relevant SAE standards were reviewed as part of the development process. The following voluntary consensus standards have been used in developing the H–III6C dummy and the weighted dummy proposed in today's document: SAE Recommended Practice J211–1995 Instrumentation for Impact Tests—Parts 1 and 2, dated March, 1995; and SAE J1733 Information Report, titled ''Sign Convention for Vehicle Crash Testing'', dated December 1994.

*H. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, Federal requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likly to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section

205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule would not impose any unfunded mandates under the UMRA. This proposed rule would not meet the definition of a Federal mandate because it would not impose requirements on anyone. It would amend 49 CFR part 572 by adding design and performance specifications for a weighted six-year-old child dummy that the agency may later use in the Federal motor vehicle safety standards. If this proposed rule becomes final, it would affect only those businesses that choose to manufacture or test with the dummy. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

*I. Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Has the agency organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could the agency improve clarity by adding tables, lists, or diagrams?
—What else could the agency do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

*J. Regulation Identifier Number*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

*Comments*

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

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If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/).*
2. On that page, click on ''search.''
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

**List of Subjects in 49 CFR Part 572**

Motor vehicle safety, Incorporation by reference.

In consideration of the foregoing, NHTSA is proposing to amend 49 CFR part 572 as follows:

## PART 572—ANTHROPOMORPHIC TEST DUMMIES

1. The authority citation for part 572 would continue to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. 49 CFR part 572 would be amended by adding a new subpart S, consisting of §§ 572.160–572.167, to read as follows:

### Subpart S—Hybrid III Six-Year-Old Weighted Child Test Dummy



### Subpart S—Hybrid III Six-Year-Old Weighted Child Test Dummy

#### § 572.160 Incorporation by reference.

(a) The following materials are hereby incorporated into this subpart by reference:

(1) A drawings and specifications package entitled ''Drawings and Specifications for the Hybrid III Six-Year-Old Weighted Child Test Dummy (H–III6CW) [a date will be inserted in the final rule]'', consisting of:

(i) Drawing No. 127–1000, Head Assembly;

(ii) Drawing No. 127–1015, Neck Assembly;

(iii) Drawing No. 167–2000, Upper Torso Assembly;

(iv) Drawing No. 167–3000, Lower Torso Assembly;

(v) Drawing No. 127–4000, Leg Assembly;

(vi) Drawing No. 127–5000, Arm Assembly; and

(vii) The Hybrid III Six-Year-Old Weighted Child Parts List.

(2) A procedures manual entitled ''Procedures for Assembly, Disassembly, and Inspection (PADI) of the Hybrid III Six-Year-Old Weighted Child Test Dummy [a date will be inserted in the final rule]'';

(3) SAE Recommended Practice J211–1995, titled ''Instrumentation for Impact Tests—Parts 1 and 2'', dated March, 1995;

(4) SAE J1733 Information Report, titled ''Sign Convention for Vehicle Crash Testing'', dated December 1994.

(b) The Director of the Federal Register approved those materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials may be inspected at NHTSA's Technical Reference Library, 400 Seventh Street, SW., room 5109, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(c) The incorporated materials are available as follows:

(1) The Drawings and Specifications for the Hybrid III Six-Year-Old Weighted Child Test Dummy referred to in paragraph (a)(1) of this section are available in electronic format through the NHTSA docket center and in paper format from Leet-Melbrook, Division of New RT, 18810 Woodfield Road, Gaithersburg, MD 20879, (301) 670–0090.

(2) The SAE materials referred to in paragraphs (a)(3) and (a)(4) of this section are available from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096.

#### § 572.161 General description.

(a) The Hybrid III Six-Year-Old Weighted Child Test Dummy is defined by drawings and specifications containing the following materials:

(1) Technical drawings and specifications package (drawing 167–0000), the titles of which are listed in Table A;

(2) Procedures for Assembly, Disassembly, and Inspection (PADI) of the Hybrid III Six-Year-Old Weighted Child Test Dummy [a date will be inserted in the final rule].

TABLE A

| Component assembly | Drawing No. |
|---|---|
| Head assembly | 127–1000 |
| Neck assembly | 127–1015 |
| Upper torso assembly | 167–2000 |
| Lower torso assembly | 167–3000 |
| Leg assembly | 127–4000 |
| Arm assembly | 127–5000 |

(b) Adjacent segments are joined in a manner such that except for contacts existing under static conditions, there is no contact between metallic elements throughout the range of motion or under simulated crash impact conditions.

(c) The structural properties of the dummy are such that the dummy must conform to this subpart in every respect before use in any test similar to those specified in Standard 208, ''Occupant Crash Protection'' (49 CFR 571.208), and Standard 213, ''Child Restraint Systems'' (49 CFR 571.213).

#### § 572.162 Head assembly and test procedure.

The head assembly is assembled and tested as specified in 49 CFR 572.122.

#### § 572.163 Neck assembly and test procedure.

The neck assembly is assembled and tested as specified in 49 CFR 572.123.

#### § 572.164 Thorax assembly and test procedure.

(a) *Thorax (upper torso) assembly.* The thorax consists of the part of the torso assembly shown in drawing 167–2000.

(b) When the anterior surface of the thorax of a completely assembled dummy (drawing 167–2000) that is seated as shown in Figure S1 is impacted by a test probe conforming to 49 CFR 572.127(a) at 6.71 ± 0.12 m/s (22.0 ± 0.4 ft/s) according to the test procedure specified in 49 CFR 572.124(c):

(1) The maximum sternum displacement relative to the spine, measured with chest deflection transducer (drawing 127–8050), must be not less than 38.0 mm (1.50 in) and not more than 46.0 mm (1.80 in). Within this specified compression corridor, the peak force, measured by the probe in accordance with 49 CFR 572.127, must be not less than 1225 N (275 lbf) and not more than 1455 N (327 lbf). The peak force after 12.5 mm (0.5 in) of sternum displacement, but before reaching the minimum required 38.0 mm (1.46 in) sternum displacement limit, must not exceed by more than 10 percent the value of the peak force measured within the required displacement limit.

(2) The internal hysteresis of the ribcage in each impact as determined by the plot of force vs. deflection in paragraph (b)(1) of this section must be not less than 65 percent but not more than 85 percent.

(c) *Test procedure.* The thorax assembly is tested as specified in 49 CFR 572.124(c).

#### § 572.165 Upper and lower torso assemblies and torso flexion test procedure.

(a) *Upper/lower torso assembly.* The test objective is to determine the stiffness effects of the lumbar spine (drawing 127–3002), including cable (drawing 127–8095), mounting plate insert (drawing 127–910420–048), nylon shoulder busing (drawing 9001373), nut

(drawing 90013360), spine box weighting plates (drawings 167–2010–1 and –2), lumbar base weight (drawing 167–3010), and abdominal insert (drawing 127–8210), on resistance to articulation between the upper torso assembly (drawing 167–2000) and the lower torso assembly (drawing 167–3000).

(b)(1) When the upper torso assembly of a seated dummy is subjected to a force continuously applied at the head to neck pivot pin level through a rigidly attached adaptor bracket as shown in Figure S2 according to the test procedure set out in 49 CFR 572.125(c), the lumbar spine-abdomen assembly must flex by an amount that permits the upper torso assembly to translate in angular motion until the machined surface of the instrument cavity at the back of the thoracic spine box is at 45 ± 0.5 degrees relative to the transverse plane, at which time the force applied as shown in Figure S2 must be not less than 85 N (18.5 lbf) and not more than 125 N (27.5 lbs), and

(2) Upon removal of the force, the torso assembly must return to within 8 degrees of its initial position.

(c) *Test procedure.* The upper and lower torso assemblies are tested as specified in 49 CFR 572.125(c), except that in paragraph (5) of that section, the initial torso orientation angle may not exceed 32 degrees.

**§ 572.166 Knees and knee impact test procedure.**

The knee assembly is assembled and tested as specified in 49 CFR 572.126.

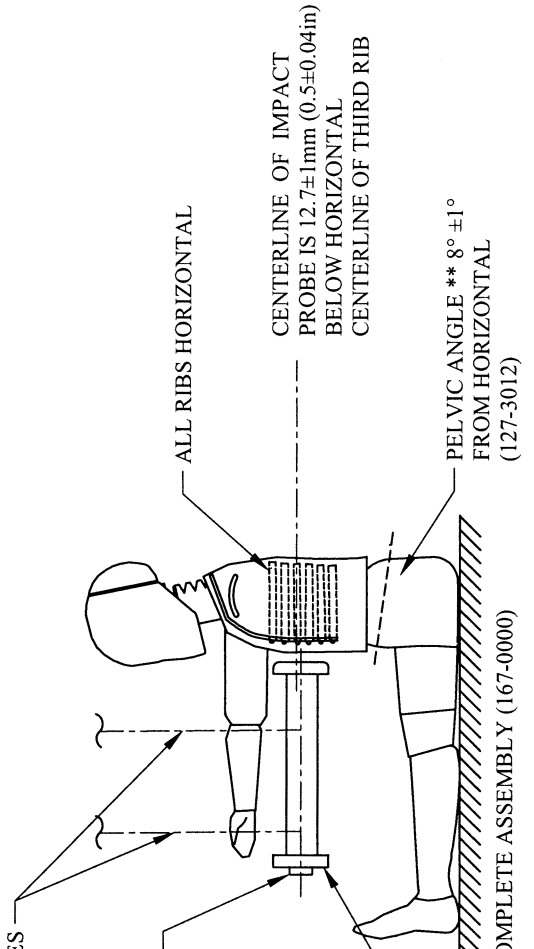
**§ 572.167 Test conditions and instrumentation.**

The test conditions and instrumentation are as specified in 49 CFR 572.127.

* * * * *

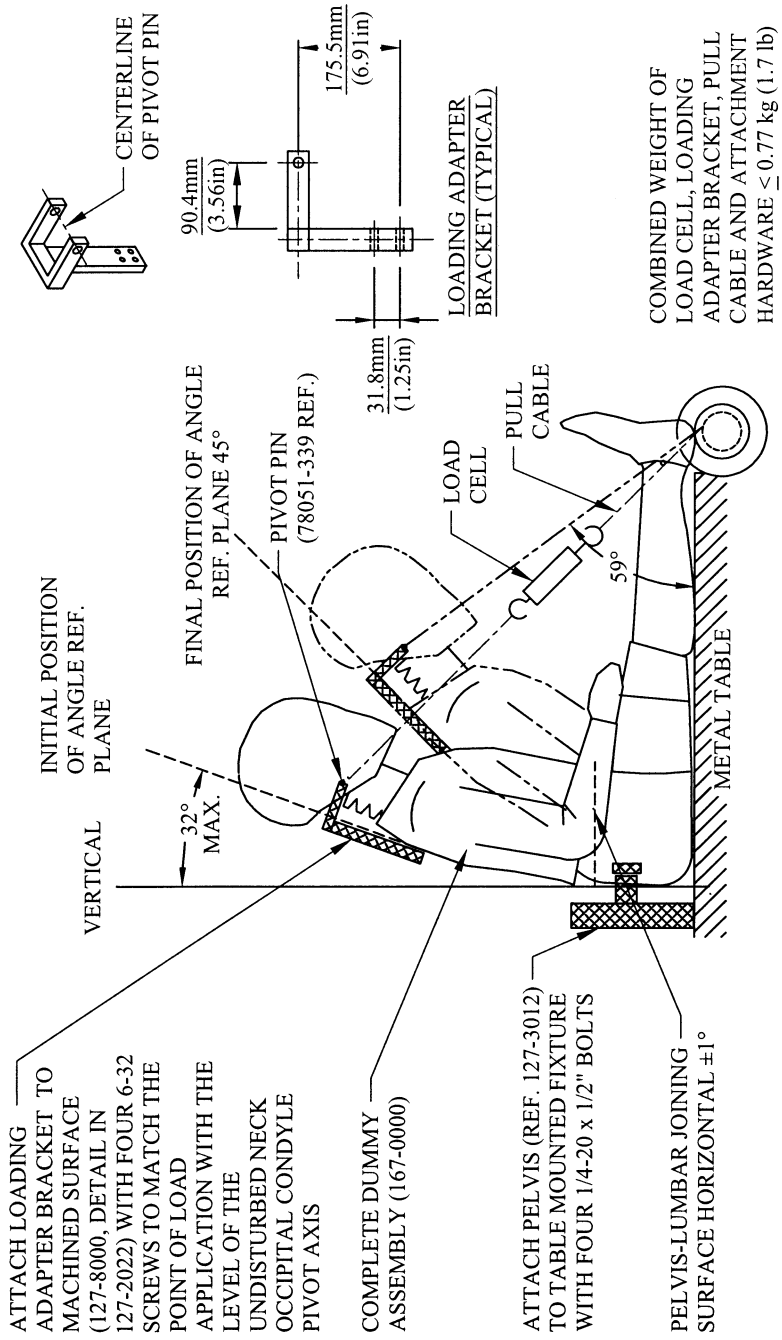
BILLING CODE 4910–59–P

FIGURE S1
THORAX IMPACT TEST SET-UP SPECIFICATIONS




* 1/3 CABLE WEIGHT NOT TO EXCEED 5% OF THE TOTAL IMPACT PROBE WEIGHT
** PELVIS LUMBAR JOINING SURFACE

FIGURE S2
TORSO FLEXION TEST SET-UP SPECIFICATIONS




Issued: May 1, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 03–11294 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–59–C**

# Notices

Federal Register
Vol. 68, No. 88
Wednesday, May 7, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lassen National Forest; California; Treatment Unit-1 Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Cancellation of notice of intent.

**SUMMARY:** This notice cancels the Notice of Intent to prepare an Environmental Impact Statement for the Treatment Unit-1 Project on the Lassen National Forest, published in the **Federal Register** on January 22, 2002 (Volume 67, Number 14, pages 2853–2856).

**ADDRESSES:** Almanor District Ranger, Lassen National Forest, P.O. Box 767, Chester, CA 96020.

**FOR FURTHER INFORMATION CONTACT:** Dominic Cesmat, telephone: (530) 258–2141.

**SUPPLEMENTARY INFORMATION:** A Notice of Intent to prepare an Environmental Impact Statement for the Treatment Unit-1 Project is cancelled because the Administrative Study that this project was linked to will be redesigned. The Administrative Study will be redesigned to accommodate the Forests' implementation of the HFQLG legislation and the National Fire Plan while simultaneously addressing concerns with the scientific design of the originally proposed study. Based on issues and questions raised during scoping, the proposed study was determined to be unacceptable regarding these factors.

Dated: April 29, 2003.

**Jack T. Walton,**

*Acting Forest Supervisor.*

[FR Doc. 03–11256 Filed 5–6–03; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lassen National Forest; California; Mineral Forest Recovery Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Cancellation of Notice of Intent.

**SUMMARY:** This notice cancels the Notice of Intent to prepare an Environmental Impact Statement for the Mineral Forest Recovery Project published in the **Federal Register** on November 29, 2000 (Volume 65, Number 230, pages 71088–71090).

**ADDRESSES:** Almanor District Ranger, Lassen National Forest, P.O. Box 767, Chester, CA, 96020.

**FOR FURTHER INFORMATION CONTACT:** Dominic Cesmat, telephone: (530) 258–2141.

**SUPPLEMENTARY INFORMATION:** The Notice of Intent to prepare an Environmental Impact Statement for the Mineral Forest Recovery Project is cancelled because land management direction for the project area has changed substantially from project inception such that the alternatives that were analyzed in the Draft Environmental Impact Statement (DEIS) are either invalid, or would result in ineffective fuel treatments for the project area. A Notice of Availability for a DEIS for this project was published in the **Federal Register** on August 3, 2001 (Volume 66, Number 150, pages 40697–40698). No further work will be completed on this project, and therefore a Final Environmental Impact Statement for this project will not be forthcoming.

Dated: April 29, 2003.

**Jack T. Walton,**

*Acting Forest Supervisor.*

[FR Doc. 03–11257 Filed 5–6–03; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Glenn/Colusa County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Brochure for Glenn/Colusa, (5) Project Proposals/ Possible Action, (6) Update on Approved Projects, (7) Status of Members, (8) How to Solicit Projects, (9) General Discussion, (10) Next Agenda.

**DATES:** The meeting will be held on May 19, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

**FOR FURTHER INFORMATION CONTACT:** Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by May 15, 2003 will have the opportunity to address the committee at those sessions.

Dated: May 1, 2003.

**James F. Giachino,**

*Designated Federal Official.*

[FR Doc. 03–11255 Filed 5–6–03; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Okanogan and Wenatchee National Forests Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Okanogan and Wenatchee National Forests Resource Advisory Committee will meet on Tuesday, May 20, 2003, at the Red Lion Hotel, 1225 North Wenatchee Avenue, Wenatchee, Washington. The meeting

will begin at 9 a.m. and continue until 3 p.m. Committee members will review Okanogan County projects proposed for Resource Advisory Committee consideration under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000. All Okanogan and Wenatchee National Forests Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: April 30, 2003.

**Darrel L. Kenops,**

*Acting Forest Supervisor, Okanogan and Wenatchee National Forests.*

[FR Doc. 03–11258 Filed 5–6–03; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Okanogan and Wenatchee National Forests Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Okanogan and Wenatchee National Forests Resource Advisory Committee will meet on Thursday, May 29, 2003, at the Red Lion Hotel, 1225 North Wenatchee Avenue, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. Committee members will review Kittitas County projects proposed for Resource Advisory Committee consideration under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000. All Okanogan and Wenatchee National Forests Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98001, 509–662–4335.

Dated: April 30, 2003.

**Darrel L. Kenops,**

*Acting Forest Supervisor, Okanogan and Wenatchee National Forests.*

[FR Doc. 03–11259 Filed 5–6–03; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Okanogan and Wenatchee National Forests Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Okanogan and Wenatchee National Forests Resource Advisory Committee will meet on Tuesday, June 10, 2003, at the Red Lion Hotel, 1225 North Wenatchee Avenue, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. Committee members will review Chelan County projects proposed for Resource Advisory Committee consideration under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000. All Okanogan and Wenatchee National Forests Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: April 30, 2003.

**Darrel L. Kenops,**

*Acting Forest Supervisor, Okanogan and Wenatchee National Forests.*

[FR Doc. 03–11260 Filed 5–6–03; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Eastern Arizona Counties Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Eastern Arizona Counties Resource Advisory Committee will meet in Overgaard, Arizona. The purpose of the meeting is to review and approve projects for funding and approve evaluation criteria for the projects.

**DATES:** The meeting will be held May 23, 2003, at 11 a.m.

**ADDRESSES:** The meeting will be held at the Black Mesa Ranger District Office, Conference Room, located on Highway 260, Overgaard, Arizona. Send written comments to Robert Dyson, Eastern Arizona Counties Resource Advisory Committee, c/o Forest Service, USDA, PO Box 640, Springerville, Arizona 85938 or electronically to *rdyson@fs.fed.us*.

**FOR FURTHER INFORMATION CONTACT:** Robert Dyson, Public Affairs Officer, Apache-Sitgreaves National Forests, (928) 333–4301.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Pub. L. 106–393 related matters to the attention of the Committee may file written statements with the Committee staff three weeks before the meeting. Opportunity for public input will be provided.

Dated: April 29, 2003.

**Elaine J. Zieroth,**

*Forest Supervisor, Apache-Sitgreaves National Forests.*

[FR Doc. 03–11331 Filed 5–6–03; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for the currently approved information collection in support of our program for Complaints and Compensation for Construction Defects.

**DATES:** Comments on this notice must be received by July 7, 2003 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Christopher Ketner, Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, 1400 Independence Avenue, SW., Washington, DC 20250–0783, Telephone (202) 720–1478.

**SUPPLEMENTARY INFORMATION:**

*Title:* RD Instruction 1924–F, ''Complaints and Compensation for Construction Defects.''

*OMB Number:* 0575–0082.

*Expiration Date of Approval:* July 31, 2003.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The Complaints and Compensation for Construction Defects

program under section 509C of title V of the Housing Act of 1949, as amended, provides eligible persons who have structural defects with the Agency financed homes to correct these problems. Structural defects are defects in the dwelling, installation of a manufactured home, or a related facility or a deficiency in the site or site development which directly and significantly reduces the useful life, habitability, or integrity of the dwelling or unit. The defect may be due to faulty material, poor workmanship, or latent causes that existed when the dwelling or unit was constructed. The period in which to place a claim for a defect is within 18 months after the date that financial assistance was granted. If the defect is determined to be structural and is covered by the builders/dealers-contractor's warranty, the contractor is expected to correct the defect. If the contractor cannot or will not correct the defect, the borrower may be compensated for having the defect corrected, under the Complaints and Compensation for Construction Defects program. Provisions of this subpart do not apply to dwelling financed with guaranteed section 502 loans.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average .25 hours per response.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 500.

*Estimated Number of Responses per Respondent:* 1.00.

*Estimated Number of Responses:* 500.

*Estimated Total Annual Burden on Respondents:* 125 hours.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, at (202) 692–0042.

**Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information, including a variety of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 23, 2003.

**Arthur Garcia,**

*Administrator, Rural Housing Service.*

[FR Doc. 03–11332 Filed 5–6–03; 8:45 am]

BILLING CODE 3410–XV–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Alaska Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 11 a.m. (PDT) on Thursday, May 8, 2003. The purpose of the conference call is to plan for future projects and follow-up to Native Alaskan Report.

This conference call is available to the public through the following call-in number: 1–800–659–8297, access code 16614282. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla, of the Western Regional Office, 213–894–3437 (TDD 213–894–3435), by 3 p.m. on Wednesday, May 7, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–11290 Filed 5–6–03; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Nevada Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 11 a.m. (PDT) on Friday, May 9, 2003. The purpose of the conference call is to plan for the project on the Nevada Equal Rights Commission.

This conference call is available to the public through the following call-in number: 1–800–659–1081, access code: 16639339. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or for those made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435), by 3 p.m. on Thursday, May 8, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 2003.

**Dawn Sweet,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–11288 Filed 5–6–03; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Texas Advisory Committee to the Commission will convene at 3 p.m. and adjourn at 4 p.m. (CDT) on Friday, May 9, 2003. The purpose of the conference call is to plan future projects.

This conference call is available to the public through the following call-in number: 1–800–659–1081, access code: 16702254. Any interested member of the

public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435), by 3 p.m. on Thursday, May 8, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–11289 Filed 5–6–03; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Annual Survey of Local Government Finance (School Systems).

*Form Number(s):* F–33, F–33–1, F–33-L1, F–33-L2, F–33-L3.

*Agency Approval Number:* 0607–0700.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 4,038 hours.

*Number of Respondents:* 4,180.

*Avg Hours Per Response:* One hour.

*Needs and Uses:* The U.S. Census Bureau requests continued Office of Management and Budget clearance of the data collection for the Annual Survey of Local Government Finances (School Systems). Recently, as exemplified by the reauthorization of the Elementary Secondary Education Act (ESEA) by the No Child Left Behind Act (NCLB), there has been an increased interest in improving the Nation's public schools. One result of this intensified interest has been a significant increase in the demand for school finance data. Some areas in which data users have shown an increased interest are embodied in the central points of the No Child Left Behind Act. Included among these points are: the requirement that each state develop a statewide accountability system to ensure that every child meets the highest possible standards; Federal grants to implement programs to improve children's reading achievement through the Reading First initiative; public school choice provisions to allow children in low performing schools to transfer to a better public school; new opportunities and assistance for professional development for current educators and administrators; Federal assistance for classroom technology investment to ensure every student will become technologically-literate; and budget increases for the Title I program that provides funds to America's most needy public schools.

There has also been heightened awareness of the inequalities in funding public education, as evidenced by the increasing number of court cases which challenge the equity of many state formulas that disperse monies to public school systems. Increased interest at the Federal Government level for addressing fiscal disparities has been shown by proposals currently before the Congress that would greatly change how Federal funds are dispersed.

The Census Bureau's school finance data set for local education agencies is the only nationwide source for public school system finance data. We collect education finance data as part of our Annual Survey of State and Local Government Finances. This survey is the only comprehensive source of public fiscal data collected on a nationwide scale using uniform definitions, concepts and procedures.

We are requesting minor modifications to one of the forms used in this collection.

*Affected Public:* State, local, or Tribal government.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., Sections 161 and 182.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: May 1, 2003.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–11239 Filed 5–6–03; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### 2004 Census Test Other Living Quarters Validation Questionnaire

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before July 7, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Sharon Schoch, U.S. Census Bureau, Building 2, Room 2102, Washington, DC 20233–9200, telephone number (301) 763–8272.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The Census Bureau must provide everyone in the United States the opportunity to be counted, including persons who do not live in conventional housing units. In Census 2000, the Census Bureau implemented a comprehensive set of procedures to enumerate persons who live or stay in group quarters (GQ) such as nursing homes, college dormitories, jails, and shelters. In order to count these persons, the Census Bureau developed a list of GQs—living quarters other than conventional housing units.

Prior to the Census 2000 enumeration of persons living in group quarters, the Census Bureau conducted the Special Place Facility Questionnaire operation to develop an inventory of special place/group quarters facilities. This operation was designed to identify, verify, classify, and obtain pertinent enumeration information about every special place (SP—*See* Definition of Terms) and all group quarters associated with it.

As part of ongoing Census 2010 planning, the Census Bureau has scheduled a test in 2004, which includes a new operation, Group Quarters Validation (GQV). The goal of this new operation is to improve the enumeration of the group quarters population in the next decennial census. In order to accomplish this goal, we are developing new procedures to verify and update the existing Census 2000 GQ inventory as corrected by the Count Question Resolution (CQR—*See* Definition of Terms) program. In addition, GQV will attempt to properly classify other places with housing units that may be difficult to classify or that require special procedures such as hotels/motels and assisted living facilities. There are two test sites for the 2004 Test Census GQV operation—Queens, NY, and three rural counties in Georgia (Colquitt, Tift, and Thomas). The universe of GQV cases or addresses will be developed differently for each site.

**II. Method of Collection**

The universe for the Queens, NY test site will include all addresses identified previously as Other Living Quarters (OLQ—*See* Definition of Terms) during an earlier 2004 Census Test Address Canvassing (AC—*See* Definition of Terms) operation. The AC field staff will update and verify Census 2000 addresses for the New York test site. Address Canvassing staff will be instructed to identify any address that does not meet the definition of a housing unit and has living quarters or has the potential of having living quarters, and to code that address as an OLQ. The OLQs will be merged with the existing Census 2000 GQ inventory for the test area to produce the final list of OLQ addresses for the GQV operation.

AC will not be conducted in the Georgia test site, therefore, the OLQs for this site will consist only of the existing Census 2000 inventory as corrected by the Count Question Resolution program.

GQV staff from local census offices (LCO—*See* Definition of Terms) will visit each identified OLQ to conduct an interview using the paper OLQV questionnaire. The staff member will ask a series of questions to determine if the address is a GQ, a housing unit, or not a living quarters, such as a commercial establishment. These questions include asking the respondent's name and job title, as well as showing the respondent a card containing a list of types of group quarters. If the respondent says that none of the types of group quarters listed describes the address, the interviewer will end the interview after determining that the address is a housing unit, a nonresidential address, or another type of GQ not on our list.

If the address is determined to be a GQ, the field staff will interview the respondent to verify, classify, and obtain other pertinent information about the GQ. The LCO staff will attempt to collect information such as the basic street address, contact name, telephone number, maximum capacity, and the special place name, address, and telephone number with which the GQ is affiliated. If there are additional GQs at this address, the LCO staff will add the newly identified GQs and attempt to collect the above information for each addition.

If the address is determined to be either a housing unit or a commercial establishment with no living quarters, then the LCO staff will attempt to complete the appropriate items in the OLQV questionnaire and end the interview.

The completed questionnaires will be sent to the Census Bureau National Processing Center in Jeffersonville, Indiana for data capture, and the information from the OLQV questionnaire will be processed for assessing the effectiveness of this operation.

*Evaluation of Special Place/Group Quarters Frame Development Operations*

Approximately eight weeks after the data collection portion of GQV has been completed, the Census Bureau will conduct a follow-up evaluation to assess the effectiveness of the GQV operation. Using the OLQV questionnaire, staff will re-interview respondents at a sample of approximately 275 GQs to validate the identification of GQs and the assignment of GQ type code.

*Definition of Terms*

*Address Canvassing (AC)*—A method of data collection designed to insure that the Master Address File is current and complete. Listers collect information from each address in their assignment areas to identify all OLQs. These OLQs and the OLQs from the CQR corrected inventory make up the GQV universe. AC also identifies housing units and not-in-universe entities such as commercial establishments.

*Count Question Resolution (CQR)*—A process whereby state, local, and tribal government officials could ask the Census Bureau to verify the accuracy of the legal boundaries used for Census 2000, the allocation of living quarters and their residents in relation to those boundaries, and the count of people recorded by the Census Bureau for specific living quarters.

*Local Census Office (LCO)*—A temporary office established for Census Bureau data collection purposes.

*Other Living Quarters (OLQ)*—Any address that does not meet the definition of a housing unit and has living quarters or has the potential of having living quarters.

*Special Places (SP)*—Establishments that are administratively responsible for one or more Group Quarters. In some cases, the Special Place and the Group Quarters are one and the same.

**III. Data**

*OMB Number:* Not available.
*Form Number:* DB–351(GQV).
*Type of Review:* Regular.
*Affected Public:* Individuals, businesses or other for-profit organizations, non-profit institutions and small businesses or organizations.
*Estimated Number of Respondents:* Approximately 550 for the GQV operation. Approximately 275 for the Evaluation of Special Place/Group Quarters Frame Development Operations.
*Estimated Time Per Response:* 15 minutes.
*Estimated Total Annual Burden Hours:* 138 hours for GQV. 69 hours for the Evaluation of Special Place/Group Quarters Frame Development Operations.
*Estimated Total Annual Cost:* There is no cost to respondents except for their time to respond.
*Respondent Obligation:* Mandatory.
*Legal Authority:* Title 13, United States Code, Sections 141 and 193.

**IV. Request for Comments**

*Comments are invited on:* (a)Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 1, 2003.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–11238 Filed 5–6–03; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–827]**

### Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Paul Stolz or Crystal Crittenden, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4474 or (202) 482–0989, respectively.

**Time Limits**

**Statutory Time Limits**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

**Background**

On January 29, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China, covering the period December 1, 2000, through November 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 4236. On January 13, 2003, we published the preliminary results of review (68 FR 1591). In our notice of preliminary results, we stated our intention to issue the final results of this review no later than 120 days from the date of publication of the preliminary results.

**Extension of Time Limit for Final Results of Review**

We determine that it is not practicable to complete the final results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results until no later than July 12, 2003. *See* Decision Memorandum from Thomas Futtner to Holly A. Kuga, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the Department's main building. This extension is in accordance with section 751(a)(3)(A) of the Act.

May 1, 2003.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Import Administration, Group II.*

[FR Doc. 03–11356 Filed 5–6–03; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–823–808]**

### Final Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation on Certain Cut-to-Length Carbon Steel Plate from Ukraine

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Full Sunset Review: Certain Cut-to-Length Carbon Steel Plate from Ukraine.

**SUMMARY:** On December 31, 2002, the Department of Commerce (''the Department'') published a notice of preliminary results of the full sunset review of the suspended antidumping duty investigation on certain cut-to-length carbon plate steel (''CTL plate'') from Ukraine (67 FR 79901), in accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''). We provided interested parties an opportunity to comment on our preliminary results. We received a case brief from the Embassy of Ukraine (''the Embassy''). In addition, we received a rebuttal brief from domestic interested parties Bethlehem Steel Corporation and United States Steel Corporation. As a result of this review, the Department finds that termination of the suspended antidumping duty investigation on CTL plate from Ukraine would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

**EFFECTIVE DATE:** May 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Shannon M. McCormack or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2539 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

**Statute and Regulations:**

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*'') and in 19 CFR Part 351 (2000) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3 *Policies Regarding the Conduct of Five-year (''\Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

**Background:**

In our preliminary results, published on December 31, 2002 (67 FR 79901), we found that the termination of the suspended antidumping duty investigation on CTL plate from Ukraine would be likely to lead to continuation or recurrence of dumping, at margins determined in the final determination of the original investigation.

On February 10, 2003, the Department received a case brief from the Embassy of Ukraine. *See* Case Brief from the Embassy of Ukraine, Trade and

Economic Mission (February 10, 2003). On February 14, 2003, we received a rebuttal brief from domestic interested parties Bethlehem Steel Corporation and United States Steel Corporation. *See* Rebuttal Brief from Bethlehem Steel Corporation and United States Steel Corporation (February 14, 2003).

**Scope of Review:**

The products covered by the sunset review of the suspended antidumping duty investigation on certain cut-to-length carbon steel plate from Ukraine include hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (''HTS'') under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this sunset review is dispositive. Specifically excluded from subject merchandise within the scope of this sunset review is grade X-70 steel plate.

**Analysis of Comments Received:**

All issues raised by parties to this sunset review are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary, Import Administration, dated May 1, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the suspended antidumping duty investigation to be terminated. Parties may find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099, of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading ''May 2003.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

**Final Results of Review:**

We determine that termination of the suspended antidumping duty investigation on CTL plate from Ukraine would likely lead to a continuation or recurrence of dumping at the following percentage weighted-average margins:

| Manufacturer/producer/exporter | Weighted-average margin percentage |
|---|---|
| Azovstal | 81.43 |
| Ilyich | 155.00 |
| Ukraine-wide | 237.91 |

This sunset review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 1, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 03–11355 Filed 5–6–03; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-201–827]**

### Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Extension of Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** FOR FURTHER INFORMATION CONTACT: Mark Young or George McMahon at (202) 482–6397 or (202) 482–1167, respectively, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

**TIME LIMITS:**

**Statutory Time Limits**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (the Department) to issue the preliminary results of a review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested, and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

**Background**

On August 6, 2002, the Department of Commerce (''the Department'') published in the **Federal Register** the notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe (''SLP'') from Mexico, for the period August 1, 2001 through July 31, 2002 (67 FR 50856). On August 30, 2002, we

received a request from petitioner[1] to review Tubos de Acero de Mexico, S.A. (''TAMSA''). On September 25, 2002, we published the notice of initiation of this antidumping duty administrative review with respect to TAMSA. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 67 FR 60210 (September 25, 2002). On October 25, 2002, we received a request from petitioner to determine whether antidumping duties have been absorbed during the period of review by respondent TAMSA. TAMSA submitted a November 1, 2002 letter certifying that neither TAMSA, nor its U.S. affiliate, Siderca Corporation, directly or indirectly, exported or sold for consumption in the United States any subject merchandise during the period of review (''POR''). The preliminary results were originally due on May 5, 2003.

**Extension of Preliminary Results of Review**

After analyzing Customs information for the period of review, we preliminarily find that TAMSA is a non-shipper. Therefore, we have issued a memorandum in which we have expressed our intent to rescind this review. *See* Memorandum from Eric Greynolds to Melissa G. Skinner, regarding the *Second Administrative Review of the Antidumping Duty Order on Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico*, dated April 30, 2003.

To afford interested parties time to comment on the Department's intent to rescind this review, and because it would be impracticable to issue a preliminary determination prior to receiving those comments, we are postponing the preliminary determination by 60 days, until July 7, 2003, in accordance with 751(a)(3)(A) of the Act. *See* Decision Memorandum from Melissa Skinner to Holly A. Kuga, dated May 1, 2003, which is on file in the Central Records Unit, B-099 of the main Commerce Building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results of this review.

Dated: May 1, 2003.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 03–11354 Filed 5–6–03; 8:45 am]

**BILLING CODE 3510–DS–S**

[1] The petitioner is United States Steel Corporation.

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C-122–839]**

## Final Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Countervailing Duty Expedited Reviews.

**SUMMARY:** On August 14, 2002, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of 18 expedited reviews of the countervailing duty order on certain softwood lumber products from Canada for the period April 1, 2000 through March 31, 2001. *See Preliminary Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada*, 67 FR 52945 (August 14, 2002) (*Preliminary Results*). On November 5, 2002, the Department published its final results for 13 of these 18 expedited reviews. *See Final Results and Partial Recission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products From Canada* (67 FR 67388; November 5, 2002) (*Final Results*). Based on our analysis of additional information and verification of the questionnaire responses, we have made changes to the estimated net subsidy rates determined in the *Preliminary Results* for an additional three companies in their expedited reviews. Therefore, these final results for these three expedited reviews differ from the preliminary results. For information on estimated net subsidies, please see the ''Final Results of Reviews'' section of this notice. In accordance with these final results of reviews, we will instruct the Bureau of Customs and Border Protection (BCBP) to refund all collected cash deposits and waive future cash deposits requirements for each reviewed company as detailed in the ''Final Results of Reviews'' section of this notice.

**EFFECTIVE DATE:** May 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3338.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 22, 2002, the Department published in the **Federal Register** its amended final affirmative countervailing duty determination and countervailing duty order on certain softwood lumber products (subject merchandise) from Canada (67 FR 36070), as amended (67 FR 37775; May 30, 2002). On July 17, 2002, the Department published a Notice of Initiation of Expedited Reviews which covered 73 companies that filed complete and timely review applications. (*See Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, (67 FR 46955; July 17, 2002) (*Notice of Initiation*).)

As explained in the *Notice of Initiation*, we segregated the 73 applicants into two groups. Group 1 consists of 45 companies that obtain the majority of their wood (over 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and Canadian companies excluded from the order, as well as companies that source less than a majority of their wood from these sources and do not have tenure. Group 2 includes 28 companies that source less than a majority of their wood from these sources and have acquired Crown timber through their own tenure contracts.

In our review of the applications in Group 1, we noted that, in order to conduct our analysis, we required only minimal supplemental data for 24 of the 45 companies. The other Group 1 companies required additional information and more extensive analysis. Rather than delaying the process to provide all Group 1 companies the opportunity to submit the necessary information, we issued a short questionnaire to the 24 companies requiring only minimal information and set a short deadline for the response. Of the 24 companies, 18 were able to supply the information by the deadline. We completed our preliminary analysis of those 18 companies, using the Group 1 methodology (see ''Methodology'' section below). *See Preliminary Results.*

On September 6, 2002, petitioners filed comments to the *Preliminary Results*. Two companies subsequently requested an analysis of whether they benefited from subsidies bestowed on their inputs: Les Bois d'Oeuvre Beaudoin & Gauthier Inc. and Meunier Lumber Company Ltd. Three other companies, Interbois Inc. (Interbois), Les Moulures Jacomau 2000, Inc. (Jacomau), and Richard Lutes Cedar, Inc. (RLC), were verified subsequent to the

preliminary results of expedited reviews. We provided these three companies and petitioners with an opportunity to comment on the verification reports. We received comments on the verification reports from petitioners on October 31, 2002 and rebuttal comments from respondents on November 7, 2002, and November 22, 2002.

During the comment period for these three companies, the Department issued the *Final Results* for 13 of the 18 companies that were included in the *Preliminary Results*. We are continuing to process the other applications in Groups 1 and 2, and have issued questionnaires to both groups. This notice includes the final results of expedited reviews for Interbois, Jacomau and RLC.

**Scope of the reviews**

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and BCBP purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada* (67 FR 15539; April 2, 2002) (*see* comment 53, item D, page 116, and comment 57, item B-7, page 126), available at *www.ia.ita.doc.gov*, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box-spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.

(3) *Radius-cut box-spring-frame components*, not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS heading 4421.90.70, 1'' or less in actual thickness, up to 8'' wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and 2) if the importer establishes to BCBP's satisfaction that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits*,[1] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint.

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to the BCBP upon request:

I. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that the BCBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS

[1] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

subheadings 4418.90.45.90 , 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I-joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge-glued wood, properly classified under HTSUS item 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non-subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the countervailing duty order, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to BCBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[2] The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

**Verification**

The Department verified Interbois, Jacomau, and RLC from September 30, 2002, through October 3, 2002. On October 22, 2002, we issued the following reports: *Verification of Interbois, Inc. in the Countervailing Duty Expedited Review of Certain Softwood Lumber Products from Canada* (Interbois Verification Report), *Verification of Les Moulures Jacomau 2000, Inc. in the Countervailing Duty Expedited Review of Certain Softwood Lumber Products from Canada* (Jacomau Verification Report), and *Verification of Richard Lutes Cedar, Inc. in the Countervailing Duty Expedited Review of Certain Softwood Lumber Products from Canada* (RLC Verification Report). We provided these companies and petitioners with an opportunity to comment on the verification reports. We received comments from petitioners and rebuttal comments from respondents.

**Methodology**

These final results include companies that obtain the majority of their wood (over 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and/or Canadian companies excluded from the order. We calculated company-specific rates based on the Group 1 methodology described in the notice of preliminary results. To obtain the company-specific stumpage benefit, we multiplied the quantity of lumber inputs (except for those specified below) by the province-specific stumpage benefit calculated in the underlying investigation, *i.e.*, the average per-unit differential between the calculated adjusted stumpage fee for the relevant province and the appropriate benchmark for that province. For those provinces, such as British Columbia and Ontario, for which we calculated more than one per-unit benefit in the investigation, we calculated one province-wide per-unit benefit by weight-averaging the previously calculated values by the corresponding volumes of harvested softwood. As indicated in the *Notice of Initiation*, we have not attributed a benefit to (1) logs or lumber acquired from the Maritime Provinces, (2) logs or lumber of U.S. origin, (3) lumber produced by mills excluded in the investigation, or (4) logs from Canadian private land. We divided the stumpage benefit by the appropriate value of the company's sales to determine the company's estimated subsidy rate from stumpage and then added any benefit from other programs to obtain the cash deposit rate for the company.

**Analysis of Comments Received**

The issues raised in the comments on the verification reports by interested parties are addressed in the ''*Issues and Decision Memorandum: Final Results of Expedited Review of 3 Companies Covered by the August 14, 2002 Notice of Preliminary Results of the Countervailing Duty Expedited Reviews of Certain Softwood Lumber Products from Canada*'' (Decision Memorandum), dated concurrently with this notice, which is hereby adopted by this notice. As noted in the Decision Memorandum, we are addressing in these final results those issues that are related to the three companies included in this notice. Other issues, related for instance to whether certain companies benefitted from subsidies bestowed on their inputs or Group 2 methodology, will be addressed in the context of subsequent reviews. A list of the issues which parties have raised, and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. The Decision Memorandum is on file in the Central Records Unit in room B-099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov*, under the heading ''Federal Register Notices.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

We amended data for Interbois, Jacomau and RLC based on information obtained during verification. *See* the Interbois Verification Report, Jacomau Verification Report, and RLC Verification Report for a further discussion of such revisions.

**Final Results of Review**

We have calculated an individual subsidy rate for each producer/exporter subject to these expedited reviews. For the period April 1, 2000 to March 31, 2001, we determine the net subsidy to be as follows:

| Net Subsidies - Producer/ Exporter | Net Subsidy Rate % |
|---|---|
| Interbois Inc. ..... | 0.88% |
| Les Moulures Jacomau ..... | 0.75% |
| Richard Lutes Cedar Inc. ..... | 0.12% |

Because the rates for these companies are less than one percent *ad valorem*, which is *de minimis*, we determine that these companies are excluded from the countervailing duty order. We will instruct the BCBP to refund all cash deposits of estimated countervailing duties collected on all shipments of the subject merchandise produced and exported by these three reviewed companies. In addition, we will instruct the BCBP to waive cash deposit requirements of estimated countervailing duties on all shipments of the subject merchandise produced and exported by these three companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

This notice covers only those three companies that we have specifically identified herein. We will instruct the BCBP to continue collecting cash deposits for all non-reviewed companies

[2] *See* the scope clarification message (t 3034202), dated February 3, 2003, to the BCBP, regarding treatment of U.S. origin lumber on file in the Central Records Unit, Room B-099 of the main Commerce Building.

at the cash deposit rates established in the amended final determination on softwood lumber from Canada, 67 FR 36070 (May 22, 2002), and/or the final results of expedited reviews, 67 FR 67388 (November 5, 2002).

These expedited reviews and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677(f)(I)).

Dated: April 29, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

**Appendix I - Issues and Decision Memorandum**

*Summary and Background*

*Analysis of Comments Received*

*Comment 1:* Verification of RLC's Estimated Input Data
*Comment 2:* Verification of the Origin of RLC's Logs and Lumber
*Comment 3:* Verification of RLC's Estimated Sales Data
*Comment 4:* Interbois' Lumber Output

[FR Doc. 03–11352 Filed 5–6–03; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Jointly Owned Invention Available for Licensing

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of jointly owned invention available for licensing.

**SUMMARY:** The invention listed below is owned in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, e-mail: *mclague@nist.gov,* or fax: 301–869–2751. Any request for information should include the NIST Docket number and title for the relevant invention as indicated below.

**SUPPLEMENTARY INFORMATION:** NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

[Docket No.: 98–020US]

*Title:* Ultrasonic Strain Gage Using a Motorized Electromagnetic Acoustic Transducer (EMAT).

*Abstract:* The invention was made jointly by scientists from NIST and the University of Colorado. The invention is jointly owned by the U.S. Government, as represented by the Secretary of Commerce, and the University of Colorado. The U.S. Government's interest is available for licensing. The invention comprises an ultrasonic strain gage using an electromagnetic acoustic transducer (EMAT). Stress causes a rotation of the pure-mode polarization directions of SH-waves and a change in the phase of waves polarized along these certain directions. The device comprises a rotating small-aperture EMAT, connected to a processor, to measure phase and amplitude data as a function of angle. The EMAT is placed on a work piece at the location where the stress is to be measured. The acoustic birefringence Beta is determined from the normalized difference of these phases. From these data, an algorithm calculates values of Beta and Phi. The work piece is then stressed or its stress state is changed. The values are measured again at the same location. Stress is determined from the change in Beta and Phi.

Dated: May 1, 2003.

**Karen H. Brown,**

*Deputy Director.*

[FR Doc. 03–11362 Filed 5–6–03; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 031303A]**

### Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of letters of authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that 8 letters of authorization (LOAs) to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued.

**ADDRESSES:** The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2055, ext. 163.

**SUPPLEMENTARY INFORMATION:** Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on August 1, 2002 (67 FR 49869), and remain in effect until February 2, 2004. Issuance of these letters of authorization are based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Letters of Authorization were issued to:

(1). Anadarko E&P Company LP of Houston, TX, 77251, on March 19, 2003;

(2). Stone Energy Corporation of Lafayette, LA, 70505, on March 19, 2003;

(3). ExxonMobil Production Company of New Orleans, LA, 70161, on March 19, 2003;

(4). Amerada Hess Corporation, 500 Dallas Street, Houston, Texas, 77002, on April 9, 2003;

(5). Hunt Oil Company, P.O. Box 727, Scott, Louisiana, 70583, on April 9, 2003;

(6). Samedan Oil Company, 350 Glenborough, Suite 240, Houston, Texas, 77067–3299, on April 17, 2003;

(7). W&T Offshore Inc., 3900 North Causeway Boulevard, One Lakeway Center, Suite 1200, Metairie, Louisiana, 70002, on April 17, 2003; and

(8). Burlington Resources, 400 N. Sam Houston Parkway E., Suite 1200, Houston, Texas, 77060–3593, on April 28, 2003.

Dated: Apr 30, 2003.

**Laurie K. Allen,**

*Acting Office Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–11376 Filed 5–6–03; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D.121902A]**

### Small Takes of Marine Mammals Incidental to Specified Activities; Installation of a New Floating Dock at the U.S. Coast Guard Pier, Monterey, CA

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the United States Coast Guard (USCG) to take small numbers of California sea lions and possibly Pacific harbor seals by harassment incidental to the installation of a new floating dock at 100 Lighthouse Avenue in the city and county of Monterey, CA.

**DATES:** This authorization is effective from April 30, 2003, through April 29, 2004.

**ADDRESSES:** A copy of the application may be obtained by writing to Christina Fahy, Protected Species Division, National Marine Fisheries Service - Southwest Regional Office, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or by telephoning the contact listed here.

**FOR FURTHER INFORMATION CONTACT:** Christina Fahy, Southwest Regional Office, NMFS, (562) 980–4023 or Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–1401 x163.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

#### Summary of Request

On August 16, 2002, NMFS received a letter and application from the USCG, requesting an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*), incidental to the installation of a new floating dock in Monterey, CA.

The installation of a new floating dock is needed to provide better and safer access to an 87 ft (26.6 m) Coastal Patrol Boat,*USCGC Hawksbill (Hawksbill)*. Currently, the *Hawksbill* moors at a fixed wharf which does not meet the USCG's minimum standards for mooring a patrol boat. The tidal range causes severe chafing to the mooring lines and difficulties with the access gangway. The Coast Guard estimates that the cost of mooring line replacement is approximately $10,000 a year. When the patrol boat is at the dock, a crewmember is required to be continually present to adjust mooring lines and the gangway about every 40 minutes. The *Hawksbill* has a 10–person crew, which is not designed to have one person awake the entire night while in port. Finally, several locally produced gangways, mounted from the wharf, have failed to give adequate access to the *Hawksbill* during the entire tidal cycle. The installation of a floating dock will eliminate the excessive cost to mooring lines and gangway replacement and any unnecessary burden on the crew.

#### Comments and Responses

A notice of receipt of the application and proposed authorization was published on February 6, 2003 (68 FR 6116), and a 30–day public comment period was provided on the application and proposed authorization. The only comments received were from the Marine Mammal Commission (Commission). They stated,

> The Commission concurs with the Service's preliminary determination of the short-term impact of conducting the proposed activities will result, at most, in a temporary modification in behavior, including temporarily vacating haulout areas, by California sea lions and Pacific harbor seals, and, as such, is expected to have a negligible impact on the animals. The Commission also concurs that the mitigation measures proposed by the applicant and the monitoring that would be required by the Service appear to be adequate to ensure that the planned activities will not result in the mortality or serious injury of any marine mammal. The Commission therefore recommends that the requested incidental harassment authorization be issued, provided

that the Service is satisfied that the monitoring and mitigation programs will be carried out as described in the application and in the Service's **Federal Register** notice. The Service should also advise the Coast Guard that California sea otters inhabit waters in Monterey area and that an incidental taking authorization from the Fish and Wildlife Service to cover this species may also be needed.

On October 19, 2001, the USCG requested consultation from the U.S. Fish and Wildlife Service (FWS) on the southern sea otter (*Enhydra lutris nereis*) and the brown pelican (*Pelacanus occidentalis*). FWS responded on December 21, 2001, stating, ''Based on the information provided in the concurrence request, and given the full implementation of the avoidance measure contained in this request, we concur with your determination that the project is not likely to adversely affect the southern sea otter and the brown pelican. Consequently, further consultation pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended, is not required.''

**Description of Habitat and Marine Mammals Affected by the Activity**

A description of the Monterey Bay ecosystem and its associated marine mammals can be found in the USCG application (USCG 2002).

*Marine Mammals*

General information on California sea lions, harbor seals and other marine mammal species found in central California waters can be found in Caretta et al. (2001) which is available at: *http://www.nmfs.noaa.gov/prot__res/readingrm/MMSARS/2002PacificSARs.pdf*

The marine mammals likely to be found in the project area are limited to the California sea lion and harbor seal. The California sea lion primarily uses the central California area to feed during the non-breeding season. California sea lions are regularly observed in the Monterey Harbor area in the autumn, winter, and into the early spring. They regularly haul out on the USCG Jetty. No pupping occurs in the project area.

A small number of harbor seals are also expected to be found in the project area. Harbor seals are distributed throughout the west coast of California. In Monterey Harbor, harbor seals haul out on a rocky outcropping located approximately 300 m (984 ft) inshore of the proposed project site. Harbor seals do not pup at this site, although several pupping sites are located around the Monterey Peninsula within 3 to 20 km (1.9 to 12.4 mi) of the project site.

**Potential Effects on Marine Mammals**

It is possible that California sea lions and harbor seals swimming in the project vicinity during pile driving may be subject to elevated sound pressure levels that could produce a temporary shift in the animal's hearing threshold. Construction and human activity around the site could also potentially result in behavioral changes in nearby pinnipeds. California sea lions and harbor seals may temporarily cease normal activities, such as feeding, or pop their heads up above water in response to the noise. They may also be curious and choose to investigate the project site. However, existing evidence shows that most marine mammals tend to avoid loud noises and will likely move away from the project site (Richardson et al., 1995). Disturbance from these activities is expected to have a short-term negligible impact to a number of sea lions and harbor seals. These disturbances will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

During the installation of the floating dock, California sea lion incidental harassment is expected to occur on a daily basis upon initiation of the pile driving. Sea lions are also likely to be initially harassed by the barge tender moving the barge into place. If the animals no longer perceive construction noise and activity as being threatening, they are likely to resume their regular hauling out behavior. The number of sea lions disturbed will vary daily, but animals in the water near the project site or hauled out closest to the project site are more likely to be disturbed than animals hauled out at the farther end of the jetty. Based on past ground surveys, the number of California sea lions that may potentially be harassed could range from 200 to 400, and possibly as many as 600 animals may move each day as a result of the project activities.

Whether harbor seals, reacting to construction noise and associated activity, will move away from the rock outcropping is unknown. While seals are generally thought to be less tolerant of human activities than sea lions, the location of their haulout from the project site may be far enough away that disturbances may be less likely. Seals that are swimming near the project site may be harassed during construction activity, especially pile driving, and may swim away from the immediate area. Less than 20 harbor seals are expected to use the rocky outcroppings within the Monterey harbor during the project period. During aerial surveys from 1997 to 1999, the maximum number of harbor seals recorded on the rocky outcropping within the Monterey harbor was 15 animals.

**Potential Effect on Habitat**

The activity will take place on a part of the Monterey USCG pier that is not used directly by any marine mammal species. Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the rock jetty at the end of the USCG pier by California sea lions and perhaps of the nearby rocky outcropping by Pacific harbor seals while work is in progress or until pinnipeds acclimate to the disturbance. This will not likely result in any permanent reduction in the number of sea lions or seals at these haulouts. Sea lions are regularly disturbed by boats and human activities in Monterey Harbor. In addition, approximately 4–5 m (13.1–16.4 ft) above the harbor seal haul-out, there is a busy bike path and pedestrian walkway. Seals are frequently disturbed year-round due to their proximity to the bike path, particularly during the daytime. The abandonment of either haulout is not anticipated since existing foot traffic, commercial and recreational boating, and human activity currently occurring within the area have not caused long-term abandonment.

Therefore, other than the potential, short-term abandonment by California sea lions and harbor seals of part of their existing haulouts in Monterey Harbor during floating dock installation, no impact on the habitat or food sources of marine mammals are likely from this project.

**Mitigation**

Several mitigation measures to reduce the potential for harassment from installation of the floating dock will be implemented by USCG as part of their activity. General restrictions are as follows: the work will be performed during daylight hours only so that potential impacts can be detected more easily and steps can be taken to avoid them; shouting, loud noises, fast movements, and other activities that would disturb the haul-out sites will be minimized (considering human safety concerns foremost); the number of people and the amount of equipment on the USCG pier in close proximity to the sea lion haulout will be restricted to the minimum required to effectively perform the work; all equipment will be kept on the west side of the USCG pier and, as much as possible, out of sight of the sea lion haulout site; a NMFS-approved biological monitor will be on site at all times during the project

operations to monitor marine mammal disturbances and to advise personnel on ways to minimize or avoid disturbances.

General restrictions during pile driving will include: no piles will be driven between the hours of 5 p.m. and 8 a.m. Based on a recommendation from NMFS, the USCG will avoid exposing pinnipeds to unsafe noise levels (190 dB re 1 microPascal-m). Given the acoustic monitoring from pile driving exercises for the Noyo River Bridge, the USCG will establish an initial safety zone of 50 m (164.0 ft) around the pile-driving site. The marine mammal monitor will scan the safety zone for 5 minutes continuously just prior to pile driving to determine whether marine mammals are present. Pile driving will not begin until the safety zone is clear. If an animal is in the safety zone before initiation of the pile driving activity on any given work day, operations will be delayed until the animal has moved a safe distance away. If an animal enters the safety zone while pile driving is occurring, operations will be stopped immediately until the animal has moved beyond the range of the safety zone. In consultation with NMFS, the safety zone may be increased if animals beyond 50 m (164.0 ft) show excessive behavioral changes in response to pile driving operations. If pile driving stops for less than 45 minutes, another 5–minute scan will not be necessary; if it stops for longer than 45 minutes, another scan will be performed.

In order to provide further protection to pinnipeds hauled out near the project area, the USCG will also ''dry fire'' the hammer prior to operating at full capacity. A ''dry fire'' occurs when the hammer is raised and dropped with no compression of the pistons, an action which produces approximately 50 percent of the maximum in-air noise level, or 45–55 dB (re 20 microPascal-m). This dry-firing should allow pinnipeds in the area to voluntarily move from the area and should expose fewer animals to loud sounds both underwater and above water.

**Monitoring**

NMFS will require the USCG to monitor the impact of the floating dock installation activities on California sea lions and harbor seals in Monterey Harbor. Monitoring will be conducted by one or more NMFS-approved monitors.

In general, the marine mammal monitor(s) will record the date and time of arrival and departure of the monitor and work crew. The monitor will also conduct counts of sea lions on the jetty and counts of pinnipeds in the water near the project site every hour, commencing one hour before the start of project activity each day and ending 15 minutes after all project activities have ceased. Data on size classes and sex (when possible) of sea lions on the jetty will be collected. Counts of harbor seals will be obtained at the beginning and the end of each work day. If possible, data on size class and sex of animals will be collected. The monitor(s) will also collect information on disturbance reactions, including the number of animals disturbed and the source (including type, location, timing, and duration of disturbance). The monitor will also record environmental conditions, including date, time, cloud cover, visibility, wind direction and velocity, swell direction and height, and tides.

During pile driving operations, the monitor will monitor the 50–meter safety zone, as described above (see Mitigation). The safety zone will be marked with temporary buoys in order to facilitate monitoring efforts.

**Reporting**

The USCG will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of California sea lions and harbor seals that may have been disturbed as a result of floating dock installation activities. These reports will include data collected during daily monitoring.

A draft report must be submitted to the Regional Administrator within 60 days after the conclusion of the project. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report. If no comments are received from NMFS, the draft report will be considered to be the final report.

**Endangered Species Act**

Under section 7 of the Endangered Species Act, NMFS has determined that there will be no effect on listed species under NMFS jurisdiction. In addition, the USCG requested consultation with the FWS on October 19, 2001, for the southern sea otter and the brown pelican. The FWS concurred with the determination that the proposed installation of a floating dock at the U.S. Government Breakwater, Sation Monterey, is not likely to adversely affect the southern sea otter or the brown pelican.

**National Environmental Policy Act**

In conjunction with the promulgation of regulations implementing section 101(a)(5)(D) of the MMPA, NMFS completed an Environmental Assessment (EA) on May 9, 1995, that addressed the impacts on the human environment from the issuance of IHAs and the alternatives to that action. NMFS' analysis resulted in a Finding of No Significant Impact (FONSI). In addition, this proposed action, including pile driving, will use pile driving equipment that is less intense and will, therefore, have a lower impact on the marine environment than pile driving equipment used in other surveys for which EAs and resulting FONSIs have been prepared previously. This IHA also qualifies for a categorical exclusion under NOAA Administrative Order 216–6. Therefore, a new EA is not required and a new one will not be prepared.

**Conclusions**

NMFS has determined that the short-term impact of the floating dock installation, as described in this document and in USCG (2002), should result, at worst, in the temporary modification in behavior by California sea lions and Pacific harbor seals. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury or by death is anticipated, and harassment takes will be at the lowest level practicable due to the incorporation of the mitigation measures mentioned previously in this document.

Since NMFS is assured that the taking would not result in more than the incidental harassment of small numbers of California sea lions and Pacific harbor seals or would not have an unmitigatable adverse impact on the availability of these stocks for subsistence uses and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) have been met and the authorization can be issued. For the above reasons, NMFS has issued an IHA for a 1–year period beginning on the date noted above (see DATES) for the incidental harassment of California sea lions and harbor seals by the installation of a floating dock in Monterey, California, provided the above mentioned monitoring and reporting requirements are incorporated.

Dated: Apr 30, 2003.

**Laurie K. Allen,**

*Acting Office Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–11377 Filed 5–6–03; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 050103D]**

### Marine Mammals; File No. 881–1710

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that the Alaska SeaLife Center (ASLC), 301 Railway Avenue, Seward, AK 99664, (Shannon Atkinson, Ph.D., Principal Investigator) has applied in due form for a permit to take harbor seals (*Phoca vitulina*) for purposes of scientific research.

**DATES:** Written or telefaxed comments must be received on or before June 6, 2003.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

**FOR FURTHER INFORMATION CONTACT:** Ruth Johnson or Amy Sloan, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

To better investigate potential causes of the decline of harbor seals in the Gulf of Alaska, the ASLC is restructuring their captive population to represent young, healthy seals from genetic stocks affected by the Gulf of Alaska decline. To accomplish this, eight recently weaned harbor seals will be captured from the wild over a two to three year period in the Gulf of Alaska for long-term holding and research at the ASLC. Seals will be captured in nets and transported in kennels to the ASLC for permanent captivity. A maximum of 30 capture attempts will occur per year. During seal capture attempts in the wild, up to 20 seals may incidentally be caught in nets and released, and up to 100 seals may be incidentally disturbed at the haul-out sites. Weaned female pups captured for permanent captivity will be sampled in the wild as follows: sedation or anesthesia; body mass, morphometrics, and 3D photogrammetry; blood, blubber, whisker, and skin samples; body composition; flipper tagging and microchip implant; ultrasound; fecal and urine collection; skin and mucosal swabs; endoscopy; and disease screening. Two accidental mortalities per year are requested during activities conducted in the wild and during transport.

Once at the ASLC, the following will be performed on the harbor seals: monthly health assessments (as described in sampling above); hormone challenge experiments twice yearly; weights and measurements taken up to daily; blood sampling up to once a week; fecal and urine sampling 12 times a year, with dietary markers used four times per year; blubber ultrasound up to daily; bio-electrical impedance once a month; total blood volume determination once a month; deuterium oxide administration and blood sampling once per month; feeding trials four times a year; mucosal swabs, saliva collection, examination of external genitalia up to three times per week; blubber biopsies up to eight times per year; video, photographic, radiographic, digital, and thermal imaging as needed; anesthesia and sedation as deemed necessary by the attending veterinarian. Up to two research-related mortalities per year are requested for the harbor seals once held at ASLC.

This study investigates the importance of lipids in the diets of harbor seals and the long-term effects of high and low lipid diets on the growth, development, maturity, and health of seals. The ASLC proposes to measure a suite of growth and health parameters for seals fed a mixed species diet that differ only with the presence of high and low fat herring and test whether seals that are lean due to lower dietary lipids show, relative to the seals fed a higher lipid diet: (1) Decreased growth rates; (2) delayed reproduction; (3) altered ovulation times; (4) endocrine or immune system function that may adversely affect reproduction or survival; (5) different seasonal or age-related physiological responses affecting digestive efficiency and lipid storage. The following types of samples will be collected from each of the eight harbor seals held at ASLC: blood, blubber, whisker, skin, urine, feces, and skin and mucosal swabs. The applicant has requested a five-year permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 1, 2003.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–11375 Filed 5–6–03; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* United States Patent and Trademark Office (USPTO).

*Title:* Patent Processing (Updating).

*Form Number(s):* PTO/SB/08a/08b/21/22/23/24/24A/25/26/27/30/31/32/35/36/37/42/43/61/62/63/ 64/64a/67/68/91/92/96/97, PTO–2053–A/B, PTO–

2054–A/B, PTO–2055–A/B, PTOL/413A, eIDS, EFS form.

*Agency Approval Number:* 0651–0031.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 830,629 hours annually.

*Number of Respondents:* 2,208,339 responses per year.

*Avg. Hours Per Response:* The USPTO estimates that it will take anywhere from one minute 48 sections (0.03 hours) to eight hours (8.0 hours), depending on the amount of information that the applicant needs to submit to the USPTO, to complete the forms and requirements associated with this information collection. This includes time to gather the necessary information, create the documents, and submit the completed request.

*Needs and Uses:* During the pendency of a patent application or the period of enforceability of a patent, situations arise that require collection of information for the USPTO to further process the patented file or the patent application. This information can be used by the USPTO to continue the processing of the patent or application or to ensure that applicants are complying with the patent regulations. These situations involve responses filed by applicants to various USPTO actions and may include information disclosures and citations; requests for extensions of time; the establishment of small entity status; abandonment or revival of abandoned applications; disclaimers; appeals; expedited examination of design applications; transmittal forms; requests to inspect, copy and access patent applications; publication requests; and certificates of mailing/transmission.

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions; farms, the Federal Government, and State, Local or Tribal Governments.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, Suite 310, 2231 Crystal Drive, Arlington, VA 22202; by phone (703) 308–7400; or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before June 6, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC. 20503.

Dated: April 30, 2003.

**Susan K. Brown,**

*Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.*

[FR Doc. 03–11245 Filed 5–6–03; 8:45 am]

**BILLING CODE 3510–16–P**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

May 2, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** May 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://www.otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68576, published on November 12, 2002.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

May 2, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on May 8, 2003, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 338/339 | 2,120,245 dozen. |
| 347/348 | 1,515,825 dozen. |
| 351/651 | 574,236 dozen. |
| 647/648 | 1,910,492 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–11307 Filed 5–6–03; 8:45 a.m.

**BILLING CODE 3510–DR–S**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### HQ USAF Scientific Advisory Board

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Pub. L. 92–463, notice is hereby given of the forthcoming meeting of the Secretary's Advisory Group. The purpose of this meeting is to provide advice to the Secretary of the Air Force on short and long-term space-related strategy issues for the Air Force. This meeting will be closed to the public.

**DATE:** May 8, 2003.

**ADDRESS:** Room 4E869, The Pentagon, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Lt. Col. John J. Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 03–11246 Filed 5–6–03; 8:45 am]

**BILLING CODE 5001–05–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before June 6, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov*.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 1, 2003.

**John D. Tressler,**

*Leader, Regulatory Management Group, Office of the Chief Information Officer.*

### Office of the Undersecretary

*Type of Review:* New.

*Title:* School and Community Prevention Activities: A National Study of the Safe and Drug-Free Schools Program—Phase II.

*Frequency:* One time.

*Affected Public:*

State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 12,880.

Burden Hours: 7,546.

*Abstract:* The study ''School and Community Prevention Activities: A National Study of the Safe and Drug-Free Schools Program—Phase II'' will evaluate the quality of SDFSCA-funded prevention efforts in schools, to identify approaches to increase the quality and effectiveness of those efforts, to select a sample of middle and high schools for further study in Phase III, and to examine the quality of programming for Governors' program grantees.

Requests for copies of the submission for OMB review; comment request may be accessed from http://edicsweb.ed.gov, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2268. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–11253 Filed 5–6–03; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

**[Docket Nos. EA–279, PP–16–1 and PP–40–1]**

### Applications To Transfer Electricity Export Authorizations and Presidential Permits; Citizens Communications Company and UniSource Energy Company

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Citizens Communications Company (Citizens) and UniSource Energy Company (UniSource) have jointly applied to transfer Electricity Export Authorizations EA–16 and EA–40 and Presidential Permits PP–16 and PP–40 from Citizens to a new corporate entity affiliated with UniSource and currently designated as ''NewCo.''

**DATES:** Comments, protests or requests to intervene must be submitted on or before June 6, 2003.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)). In addition, the construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038. Existing electricity export authorizations and Presidential permits are not transferable or assignable. However, in the event of a proposed voluntary transfer of export authority or physical facilities, in accordance with the regulations at 10 CFR 205.305 and 10 CFR 205.323, the existing holder of an export authorization or permit and the transferee(s) are required to file joint applications for transfer with DOE that include a statement of reasons for the transfer.

On August 8, 1952, the Federal Power Commission (FPC; the predecessor agency of DOE) issued a Presidential

permit in Docket E–6432 (DOE Presidential Permit PP–16) to Citizens Utilities Company (now Citizens Communications Company) for one 2,300-volt (2.3-kV) electric distribution line that crossed the United States border with Mexico in the vicinity of Sondita Avenue, Nogales, Arizona, and one 13-kV distribution line that originated at the Grand Avenue Plant and crossed the United States border with Mexico 1700 feet east of the 2.3-kV facilities.

On December 29, 1967, the FPC granted a Presidential permit in Docket E–7371 (DOE Presidential Permit PP–40) to Citizens Utilities Company for a 13.8-kV distribution line crossing the United States border with Mexico in the vicinity of Boundary Monument No. 112 in Lochiel, Arizona.

On December 29, 1967, in Docket E–7370, and on February 2, 1970, in Docket E–6431, (DOE Docket Nos. EA–40 and EA–16, respectively) the FPC authorized Citizens Utilities to export electric energy to Mexico using the above cross-border facilities.

On April 18, 2003, Citizens and UniSource (collectively, the ''Applicants'') jointly filed applications with DOE to transfer Presidential Permits PP–16 and PP–40, as well as electricity export authorizations EA–16 and EA–40, from Citizens to a new corporate subsidiary of UniSource and currently designated as ''NewCo.'' As a result of an asset purchase agreement executed on October 29, 2002, Citizens agreed to sell to UniSource all assets (as further described in the applications) used by Citizens in connection with or otherwise necessary for the conduct of Citizens' electric utility business in Arizona. The sale of Citizens electric utility business to NewCo is currently pending before the Federal Energy Regulatory Commission (FERC; Docket No. EC03–54–000). UniSource owns 99.9% of the issued and outstanding common stock of Tucson Electric Power Company and all of the issued and outstanding common stock of two direct non-utility subsidiaries, Millennium Energy Holdings, Inc. and UniSource Energy Development Company.

In the instant applications, the Applicants request that the existing energy limits of 60,000,000 kilowatt-hours (kWh) per year using the PP–16 facilities, and 5,000,000 kWh per year using the PP–40 facilities be removed. The Applicants further note that the 2.3-kV facilities currently authorized in Presidential Permit PP–16 were removed in the mid-1970's and that the 13-kV line is currently maintained only for contingencies and does not serve any load. The Applicants state that there will be no physical changes to either of the existing permitted facilities.

**Procedural Matters**

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the joint applications to transfer Presidential permits and electricity export authorizations from Citizens to NewCo should be clearly marked with Dockets EA–279, PP–16–1, or PP–40–1, as appropriate. Additional copies are to be filed directly with L. Russell Mitten, Esq., VP, General Counsel, Citizens Communications Company, 3 High Ridge Park, Stamford, CT 06905; Vincent Nitido, Jr., Esq., VP, General Counsel, UniSource Energy Corporation, One South Church Ave., Suite 100, Tucson, AZ 85701; *and* Bonnie A. Suchman, Esq., Amie V. Colby, Esq., Troutman Sanders LLP, 401 9th Street, NW., Suite 1000, Washington, DC 20004.

Before an electricity export authorization or Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.*, granting the Presidential permit or electricity export authorization, with any conditions and limitations, or denying them) pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on May 1, 2003.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 03–11313 Filed 5–6–03; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Hanford

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

**DATES:** Thursday, June 5, 2003, 9 a.m.–5 p.m.; Friday, June 6, 2003, 8:30 a.m.–4 p.m.

**ADDRESSES:** Red Lion Hanford House, 802 George Washington Way, Richland, WA, Phone: (509) 946–7611, Fax: (509) 943–8564.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA, 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

*Thursday, June 5, 2003*

- Revised Draft Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement—Discussion and Draft Advice
- Integrated Safety Management System and Voluntary Protection Program Discussion Panel
- Office of River Protection Baseline (draft advice—tentative)
- DOE Budget Process Update (draft advice—tentative)
- Office of River Protection: Disposition of Transuranic Waste in the Tanks (draft advice—tentative)

*Friday, June 6, 2003*

- Informational Session on Hanford Project Management Plan Strategic Initiative #3:

—Accelerate Stabilization and De-Inventory of Nuclear Materials: Spent Nuclear Fuel, Special Nuclear Material (Plutonium) and Cesium and Strontium Capsules
Hanford Natural Resource Trustee Council Overview
Adoption of Draft Advice:
—Revised Draft Hanford Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement
—Office of River Protection Baseline (tentative)
—DOE Budget Process Update (tentative)
—Office of River Protection: Disposition of Transuranic Waste in the Tanks (tentative)
Committee Updates
Identification of September Hanford Advisory Board meeting agenda topics

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC on May 1, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–11312 Filed 5–6–03; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Science; High Energy Physics Advisory Panel

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, July 24, 2003; 9 a.m. to 6 p.m. and Friday, July 25, 2003; 8:30 a.m. to 4 p.m.

**ADDRESSES:** Four Points Sheraton, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

**FOR FURTHER INFORMATION CONTACT:** Bruce Strauss, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–3705.

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

*Tentative Agenda:* Agenda will include discussions of the following:

*Thursday, July 24, 2003, and Friday, July 25, 2003*

- Discussion of Department of Energy High Energy Physics Programs
- Discussion of National Science Foundation Elementary Particle Physics Program
- Discussion of the High-Energy Physics Facilities Recommended for the DOE Office of Science Twenty-Year Roadmap Report
- Discussion of the DOE/NSF HEPAP Subpanel on Particle Physics Project Prioritization Panel (P5) Report
- Discussion of High Energy Physics University Programs
- Reports on and Discussion of U.S. Large Hadron Collider Activities
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Bruce Strauss, 301–903–3705 or *Bruce.Strauss@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of the meeting will be available for public review and copying within 90 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on May 1, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03–11314 Filed 5–6–03; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–354–000]**

### CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 1, 2003.

Take notice that on April 28, 2003, CenterPoint Energy Mississippi River Transmission Corporation (MRT) tendered for filing, as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective May 29, 2003:

Fourth Revised Sheet No. 40
Second Revised Sheet No. 177
Original Sheet No. 178
Original Sheet No. 179
Sheet Nos. 180–182

MRT states that the purpose of this filing is to revise the provisions of the General Terms and Conditions of MRT's tariff relating to capacity releases when the Releasing Customer is not creditworthy.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the

Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Comment Date:* May 12, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–11386 Filed 5–6–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. PR03–11–001]**

## Enbridge Pipelines (Louisiana Intrastate) LLC; Notice of Petition for Rate Approval

May 1, 2003.

Take notice that on April 25, 2003, Enbridge Pipelines (Louisiana Intrastate) LLC (Enbridge) filed an amendment to its petition for rate approval, originally filed on March 19, 2003. Enbridge requests a maximum interruptible transportation rate of $0.3168 per Dth, as compared to the $0.1544 per Dth requested in its March 19 petition.

Enbridge states that pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits I the docket number field to access the document. For Assistant, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Comment Date:* May 8, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–11383 Filed 5–6–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–357–000]**

## Guardian Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 1, 2003.

Take notice that on April 29, 2003, Guardian Pipeline, L.L.C. (Guardian), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed in Appendix A attached to the filing, to be effective June 1, 2003.

Guardian states that the purpose of this filing is to make certain housekeeping changes to its tariff, enhance the delivery point tolerance under the scheduling charges provisions in its tariff, and provide for secondary point rights and overrun provisions under Rate Schedule EAW.

Guardian states that copies of this tariff filing are being served on its shippers and the Wisconsin and Illinois public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Comment Date:* May 12, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–11389 Filed 5–6–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–353–000]**

## Portland Natural Gas Transmission System; Notice of Proposed Change in FERC Gas Tariff

May 1, 2003.

Take notice that on April 28, 2003, Portland Natural Gas Transmission System (PNGTS) tendered for filing to its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to become effective on June 1, 2003:

First Revised Sheet No. 1
First Revised Sheet No. 2
Sixth Revised Sheet No. 100
Original Sheet No. 214
Original Sheet No. 215
Original Sheet No. 216
Original Sheet No. 217
Original Sheet No. 218
Second Revised Sheet No. 302
Second Revised Sheet No. 307
Second Revised Sheet No. 326
Second Revised Sheet No. 339
Original Sheet No. 560
Original Sheet No. 561
Original Sheet No. 562
Original Sheet No. 563
Original Sheet No. 564
Original Sheet No. 565
Original Sheet No. 566

PNGTS states that the purpose of its filing is to establish a new Rate Schedule FT-Flex, which is a firm

service when scheduled, subject to PNGTS's right to ''not schedule'' service on up to ten days each month. PNGTS states that it is proposing this service to provide additional options to shippers who generally need firm service, but can accept periodic interruption of their service in exchange for a lower reservation rate. PNGTS states that no new facilities are required to provide FT-Flex service, and PNGTS will incur only nominal additional costs.

PNGTS states that copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Comment Date:* May 12, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–11385 Filed 5–6–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–356–000]**

## Southern Star Central Gas Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 1, 2003.

Take notice that on April 29, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective June 1, 2003:

Southern Star states that the purpose of this filing is to allow Southern Star to become a daily allocation pipeline.

Southern Star states that copies of the transmittal letter and appendices are being mailed to Southern Star's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Comment Date:* May 12, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–11388 Filed 5–6–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–355–000]**

## Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 1, 2003.

Take notice that on April 28, 2003, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with a effective date of June 1, 2003.

Pursuant to the Approved Settlement in Docket No. RP00–260–000, *et al.*, Texas Gas is filing to implement the required unit rate reductions, effective June 1, 2003, resulting from the termination of the NGPL X–129 firm transportation agreement.

Texas Gas states that the tariff sheets reflect the unit rate reduction to: NNS and FT demand rates of $0.0066; STF peak demand rate of $0.0099; STF off-peak demand rate of $0.0043; SNS up to 1/16 hourly flow demand rate of $0.0066; SNS greater than 1/16 up to 1/12 hourly flow hourly overrun rate of $0.0088; SNS greater than 1/12 hourly flow hourly overrun rate of $0.0132; NNS, FT, STF and SNS commodity rates of $0.0001; IT peak commodity rate of $0.0100; IT off-peak commodity rate of $0.0044; and SGT rate of $0.0133. Additionally, Texas Gas proposes to remove language from Section 18 of its General Terms and Conditions (GTC) governing Availability of Third-Party Pipeline Capacity as a result of the abandonment of the NGPL X–129 firm transportation agreement.

Texas Gas states that copies of this filing have been served upon all of Texas Gas's jurisdictional customers, interested state commissions, and the Commission Staff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the

Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Comment Date:* May 12, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–11387 Filed 5–6–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–172–001]**

## Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

May 1, 2003.

Take notice that on April 28, 2003, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Ninth Revised Sheet No. 159, Eighth Revised Sheet No. 200, Third Revised Sheet No. 200A and Sixth Revised Sheet No. 225 proposed effective May 1, 2003.

Transco states that the instant filing is submitted in compliance with the Commission's order issued April 14, 2003, in Docket No. RP03–172–000 which required Transco to file revised tariff sheets providing that both replacement and releasing shippers can use multiple segmented transactions that may consist of forwardhauls and backhauls up to the shippers' MDQ to the same point within or outside the primary path at the same time.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Protest Date:* May 12, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–11384 Filed 5–6–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG03–62–000, et al.]**

## New Millennium Power Partners. LLC, et al.; Electric Rate and Corporate Filings

May 1, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. New Millennium Power Partners, LLC

[Docket No. EG03–62–000]

Take notice that on April 29, 2003, New Millennium Power Partners, LLC (New Millennium) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended. New Millennium states that it is a limited liability company that will be engaged directly or indirectly and exclusively in the business of owning or operating, or both owning and operating an eligible facility (Millennium Project), consisting of a natural gas-fired, combined cycle power plant of approximately 360 megawatts of capacity in Charlton, Massachusetts. New Millennium states that the Millennium Project commenced commercial operation in April 2001. New Millennium indicates that all output from the Millennium Project will be sold by New Millennium exclusively at wholesale.

New Millennium states that copies of the Application have been served upon the U.S. Securities and Exchange Commission, the Massachusetts Department of Telecommunications and Energy and the California Public Utilities Commission.

*Comment Date:* May 22, 2003.

### 2. New Harquahala Generating Co., LLC

[Docket No. EG03–63–000]

Take notice that on April 29, 2003, New Harquahala Generating Co., LLC (New Harquahala) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended. New Harquahala states that it is a limited liability company that will be engaged directly or indirectly and exclusively in the business of owning or operating, or both owning and operating an eligible facility (Harquahala Project), consisting of a natural gas-fired, combined cycle power plant of approximately 1,050 megawatts of capacity in Maricopa County, Arizona. Harquahala states that the Harquahala Project is expected to commence commercial operation in the third quarter of 2003, and that all output from the Harquahala Project will be sold by New Harquahala exclusively at wholesale.

Harquahala further states that copies of the Application have been served upon the U.S. Securities and Exchange Commission, the Arizona Corporation Commission and the California Public Utilities Commission.

*Comment Date:* May 22, 2003.

### 3. New Athens Generating Company, LLC

[Docket No. EG03–64–000]

Take notice that on April 29, 2003, New Athens Generating Company, LLC (New Athens) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended. New Athens states that it is a limited liability company that will be engaged directly or indirectly and exclusively in the business of owning or operating, or both owning and operating an eligible facility (Athens Project), consisting of a natural gas-fired, combined cycle power plant of approximately 1,080 megawatts of capacity in Greene County, New York. New Athens states that the Athens Project is expected to commence

commercial operation in the third quarter of 2003, and that all output from the Athens Project will be sold by New Athens exclusively at wholesale.

New Athens states that copies of the Application have been served upon the Securities and Exchange Commission, the New York Public Service Commission and the California Public Utilities Commission.

*Comment Date:* May 22, 2003.

**4. New Covert Generating Co., LLC**

[Docket No. EG03–65–000]

Take notice that on April 29, 2003, New Covert Generating Co., LLC (New Covert) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended. New Covert states that it is a limited liability company that will be engaged directly or indirectly and exclusively in the business of owning or operating, or both owning and operating an eligible facility (the Covert Project), consisting of a natural gas-fired, combined cycle power plant of approximately 1,170 megawatts of capacity in Covert Township, Van Buren County, Michigan. New Covert states that the Covert Project is expected to commence commercial operation in the fall of 2003, and that all output from the Covert Project will be sold by New Covert exclusively at wholesale.

New Covert states that copies of the Application have been served upon the U.S. Securities and Exchange Commission, the Michigan Public Service Commission, and the California Public Utilities Commission.

*Comment Date:* May 22, 2003.

**5. Allegheny Energy Supply Conemaugh, LLC**

[Docket No. EG03–66–000]

Take notice that on April 29, 2003 Allegheny Energy Supply Conemaugh, LLC (Allegheny Conemaugh) filed an Application for Determination of Exempt Wholesale Generator Status with the Federal Energy Regulatory Commission (Commission) pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended (PUHCA), all as more fully explained in the Application.

Allegheny Conemaugh states that it is a Delaware limited liability company whose membership interest is wholly-owned by Allegheny Energy Supply Company, LLC, approximately 98 percent of whose membership interest is in turn owned by Allegheny Energy, Inc., a registered public utility holding company under PUHCA.

*Comment Date:* May 22, 2003.

**6. Midwest Independent Transmission System Operator, Inc.**

[Docket Nos. ER98–1438–018, ER02–111–008]

Take notice that on April 25, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's Order in Midwest Independent Transmission System Operator Inc., 103 FERC ¶ 61,038. The Midwest ISO has requested an effective date of April 1, 2003 consistent with the Commission's Order on compliance.

The Midwest ISO states that it has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO indicates that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

*Comment Date:* May 16, 2003.

**7. Conectiv Energy Supply, Inc.**

[Docket No. ER00–1770–005]

Take notice that on April 25, 2003, Conectiv Atlantic Generation (CAG) and Conectiv Delmarva Generation (CDG) tendered for filing their triennial market power analysis in support of its market-based rate authority in compliance with the Commission's April 2t, 2000, Order accepting CAG's and CDG's updated market-based tariffs. Conectiv Energy Supply, Inc., 91 FERC ¶ 61,076.

*Comment Date:* May 16, 2003.

**8. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02–108–009]

Take notice that on April 25, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Attachment S–1 (Independent Market Monitor Retention Agreement) and Exhibit A of Attachment S–1 (Independent Market Monitor Conflicts Policy) of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, in order to correctly reference and include the Market Monitor Conflicts Policy as Exhibit A to Attachment S–1.

The Midwest ISO has requested waiver of the Commission's sixty (60)-day notice provision of Section 205 of the Federal Power Act in order to accommodate an effective date of December 23, 2002, the same effective date as Attachment S–1.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

*Comment Date:* May 16, 2003.

**9. Idaho Power Company**

[Docket No. ER03–66–003]

Take notice that on April 28, 2003, Idaho Power Company submitted revisions to its January 27, 2003, compliance filing in Docket No. ER03–66–002.

*Comment Date:* May 19, 2003.

**10. Southern Company Services, Inc.**

[Docket No. ER03–211–003ER03–212–003]

Take notice that on April 28, 2003, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company, submitted a compliance filing in accordance with the Federal Energy Regulatory Commission's Order issued March 28, 2003, in Southern Company Services, Inc., 102 FERC ¶ 61,343.

*Comment Date:* May 19, 2003.

**11. American Electric Power Service Corporation, Commonwealth Edison Company, The Dayton Power and Light Company, and PJM Interconnection, LLC**

[Docket No. ER03–262–002]

Take notice that on April 23, 2003, American Electric Power Service Corporation on behalf of Appalachian Power Service Company, Columbus

Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company; Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.; and The Dayton Power and Light Company (Dayton) (collectively the Companies) filed part 33 information in compliance with the Commission's April 1, 2003 Order and in support of approval for Dayton's proposed transfer. The Companies state that the information relates to a proposal to transfer functional control over their transmission systems to a Regional Transmission Organization, PJM Interconnection, L.L.C.

*Comment Date:* May 14, 2003.

**12. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER03–323–003]

Take notice that on April 28, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted its proposed errata filing to Attachment S–2 (Market Mitigation Measures) of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, in order to correctly reference and include changes to Attachment S–2 as required by the Commission's March 13 Order. The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

*Comment Date:* May 19, 2003.

**13. Wolverine Power Supply Cooperative, Inc.**

[Docket No. ER03–607–001]

Take notice that on April 28, 2003, Wolverine Power Supply Cooperative, Inc., (Wolverine) tendered as a compliance filing a Facilities Agreement for Construction of a Wood-style Substation and Tap between Wolverine Power Supply Cooperative, Inc. and Great Lakes Energy Cooperative. Wolverine states that it designated the Facilities Agreement as Service Agreement No. 5 to Wolverine's OATT, FERC Electric Tariff, First Revised Volume No. 1.

Wolverine states that a copy of this filing has been served upon Great Lakes Energy Cooperative and the Michigan Public Service Commission.

*Comment Date:* May 19, 2003.

**14. Black Rock Group, LLC**

[Docket No. ER03–658–001]

Take notice that on April 25, 2003, Black Rock Group, LLC (Black Rock) filed an amendment to its application for market-based rates as a power marketer. Black Rock states that the additional information clarifies the description of Black Rock as an applicant. Black Rock states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Black Rock states that it is not in the business of generating or transmitting electric power. Black Rock states that it may also engage in other, non jurisdictional, activities to facilitate efficient trade in the bulk power market, such as facilitating the purchase and sale of wholesale energy without taking title to the electricity (brokering), and arranging services in related areas such as transmission and fuel supplies.

*Comment Date:* May 16, 2003.

**15. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER03–776–000]

Take notice that on April 25, 2003, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) tendered for filing revisions to Attachment M (Losses) to the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter.

*Comment Date:* May 16, 2003.

**16. FirstEnergy Solutions Corp.**

[Docket No. ER03–777–000]

Take notice that on April 25, 2003, FirstEnergy Solutions Corp. (Solutions) tendered for filing a Service Agreement under its Tariff for Sales of Ancillary Services and Interconnected Operations Services pursuant to which it is proposing to sell Regulation and Frequency Response Service to Duquesne Light Company. Solutions states that it has asked for waiver of any applicable requirements in order to make the Service Agreement effective as of April 29, 2003.

Solutions states that a copy of this filing has been sent to Duquesne Light Company.

*Comment Date:* May 16, 2003.

**17. UNITIL Power Corp.**

[Docket No.ER03–778–000]

Take notice that on April 28, 2003, UNITIL Power Corp., tendered for filing pursuant to Schedule II Section H of Supplement No. 1 to Rate Schedule FERC No. 1, the UNITIL System Agreement, the following material:

1. Statement of all sales and billing transactions for the period January 1, 2002 through December 31, 2002, along with the actual costs incurred by UNITIL Power Corp., by FERC account.

2. UNITIL Power Corp., rates billed from January 1, 2002 to December 31, 2002, and supporting rate development.

UNITIL Power Corp., states that a copy of the filing was served upon the New Hampshire Public Utilities Commission.

*Comment Date:* May 19, 2003.

**18. Portland General Electric Company**

[Docket No. ER03–779–000]

Take notice that on April 28, 2003, Portland General Electric Company (PGE) filed a Notice of Cancellation with the Federal Energy Regulatory Commission (Commission) pursuant to Sections 35.15 and 131.53 of the Commission's Rules and Regulations. PEG states that it seeks to cancel Service Agreement for Firm Point-to-Point Service with Enron Power Marketing, Inc., (EPMI) in Docket No. ER98–2104–000. PGE requests that the cancellation be made effective as of April 17, 2003.

*Comment Date:* May 19, 2003.

**19. American Transmission Company LLC**

[Docket No. ER03–780–000]

Take notice that on April 28, 2003, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Wisconsin Public Service

Corporation. ATCLLC requests an effective date of March 28, 2003.

ATCLLC states that copies of this filing have been sent to Public Service Commission of Wisconsin and Wisconsin Public Service Corporation.

*Comment Date:* May 19, 2003.

**20. New England Power Company**

[Docket No. ER03–781–000]

Take notice that on April 29, 2003, New England Power Company (NEP) submitted for filing Original Service Agreement No. 215 (Network Integration Transmission Service) between NEP and Taunton Municipal Lighting Plant under NEP's open access transmission tariff, New England Power Company, FERC Electric Tariff, Second Revised Volume No. 9.

*Comment Date:* May 20, 2003.

**21. Rayo Energy LLP**

[Docket No. ER03–782–000]

Take notice that on April 29, 2003, Rayo Energy LLP (REL) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application for authority to sell electric energy, capacity and certain ancillary services at market-based rates under Section 205(a) of the Federal Power Act, 16 U.S.C. 824d(a), and accompanying requests for certain blanket approvals and for the waiver of certain Commission Regulations. REL requests an effective date of May 15, 2003.

*Comment Date:* May 20, 2003.

**22. Southern California Edison Company**

[Docket No. ER03–783–000]

Take notice that on April 29, 2003, Southern California Edison Company (SCE) tendered for filing a letter agreement (Letter Agreement) between SCE and the City of Rancho Cucamonga (Rancho Cucamonga). SCE respectfully requests an effective date of April 17, 2003.

SCE states that the purpose of this Letter Agreement is to provide an interim arrangement pursuant to which SCE will commence the engineering, design, and procurement of material and equipment for the interconnection facilities and distribution system facilities necessary to interconnect Rancho Cucamonga's Victoria Arbors development to SCE's distribution system and provide distribution service under SCE's Wholesale Distribution Access Tariff.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Rancho Cucamonga.

*Comment Date:* May 20, 2003.

**23. Ameren Services Company**

[Docket No. ER03–784–000]

Take notice that on April 29, 2003, Ameren Services Company (ASC) tendered for filing unexecuted Service Agreements for Network Integration Transmission Service and a Network Operating Agreement between Ameren Services and Wayne-White Counties Electric Cooperative. Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Wayne-White Counties Electric Cooperative pursuant to Ameren's Open Access Tariff.

*Comment Date:* May 20, 2003.

**24. Niagara Mohawk Power Corporation**

[Docket No. ER03–785–000]

Take notice that on April 29, 2003, Niagara Mohawk Power Corporation (Niagara Mohawk) submitted for filing an amendment to Rate Schedule 204 between New York Power Authority and the City of Jamestown.

*Comment Date:* May 20, 2003.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–11380 Filed 5–6–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2210–087 & 088]**

## Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 1, 2003.

Take notice that the two following applications have been filed with the Commission and are available for public inspection:

a. *Application Types:* Non-Project Use of Project Lands.

b. *Project Nos:* 2210–087 and 2210–088.

c. *Date Filed:* March 5, 2003 and supplemented by letter dated April 22, 2003

d. *Applicant:* Appalachian Power Company (APC)

e. *Name of Project:* Smith Mountain

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Teresa P. Rogers, Hydro Generation Department, American Electric Power, P.O. Box 2021, Roanoke, VA 24022–2121, (540) 985–2451

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: heather.campbell@ferc.gov.

j. *Deadline for filing comments and or motions:* May 30, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* P–2210–087–APC is requesting Commission approval to permit Willard Construction

of Roanoke Valley, Inc. (permittee) to install and operate 4 stationary docks with 12 covered boat slips and two floaters each for a total of forty-eight boat slips and 8 floaters. The facilities would be constructed along the Roanoke River at an area known as South Pointe Condominiums at The Waterfront. No dredging is planned as part of this proposal.

For P–2210–088–APC is requesting Commission approval to permit Grand Harbour, LTD (permittee) to install and operate 3 stationary docks with 10 covered boat slips and one floater each for a total of thirty boat slips and 3 floaters. The facilities would be constructed along the Roanoke River at an area known as Grand Harbour. No dredging is planned as part of this proposal.

l. *Location of the Applications:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–11381 Filed 5–6–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2496–070]**

## Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 1, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation Plan.

b. *Project No:* 2496–070.

c. *Date Filed:* February 20, 2003

d. *Applicant:* Eugene Water and Electric Board (EWEB)

e. *Name of Project:* Leaburg-Walterville Project

f. *Location:* The project is located on the Mckenzie River in Lane County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr Gale Banry, Energy Resource Project Manager, Eugene Water and Electric Board, (541) 484–2411.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for filing comments and or motions:* July 5, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2496–070) on any comments or motions filed. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

k. *Description of Request:* The licensee filed a recreation plan pursuant to article 432 of its license. The plan addresses recreational enhancements at the project, including a boat launch take out facility, trails, day-use facilities and signage. This notice is to extend the comment period for 60 days from the original May 5, 2003 comment date.

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file

comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–11382 Filed 5–6–03; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2003–0157; FRL–7305–6]**

## Pesticide Products; Registration Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments, identified by the docket ID number OPP–2003–0157, must be received on or before June 6, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Dennis McNeilly, Regulatory Action Leader, Registration Division (7505C), Office of Pesticide Programs, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6742; *McNeilly.dennis;@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *EPA Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0157. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please

follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0157. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0157. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0157.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0157. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. Registration Applications**

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

*Products Containing Active Ingredients Not Included in Any Previously Registered Products*

1. File symbol: 71512-E. Applicant: ISK Biosciences. Product name: Ranman 400SC Agricultural Fungicide. Product type: Fungicide. Active ingredient: Cyazofamid at 34.5%. Proposed classification/Use: None. For use on cucurbits, potato, and tomato.

2. File symbol: 71512-G. Applicant: ISK Biosciences. Product name: Technical Cyazofamid Fungicide. Product type: Fungicide. Active ingredient: Cyazofamid at 95.3%. Proposed classification/Use: None. For manufacturing use only.

**List of Subjects**

Environmental protection, Pesticides and pest.

Dated:April 28, 2003.

**Debra Edwards,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 03–11004 Filed 5–6–03; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2003–0161; FRL–7304–3]**

## Pesticide Products; Registration Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of an application to register a pesticide

product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments, identified by the docket ID number OPP–2003–0161, must be received on or before June 6, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Denise Greenway, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0161. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic

public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0161. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0161. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0161.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0161. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Registration Applications

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

*Product Containing an Active Ingredient Not Included in Any Previously Registered Product*

*File Symbol:* 72431–R. *Applicant*: Jeneil Biosurfactant Company, 400 N. Dekora Woods Boulevard, Saukville, WI 53080. *Product name*: Zonix Biofungicide. *Type of product*: Biochemical fungicide. *Active ingredient*: Rhamnolipid biosurfactant (decanoic acid, 3-[[6-deoxy-2-*O*-(6-deoxy-alpha-*L*-mannopyranosyl)-alpha-*L*-mannopyranosyl]oxy]-, 1-(carboxymethyl)octyl ester, mixture with 1-(carboxymethyl)octyl 3-[(6-deoxy-alpha-*L*-mannopyranosyl)oxy]decanoate). *Proposed classification/Use*: None. For horticultural and agricultural use to control zoosporic plant pathogenic fungi.

### List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 24, 2003.

**Sheryl K. Reilly,**

*Acting Director, Biopesticides and Pollution Division, Office of Pesticide Programs.*

[FR Doc. 03–11003 Filed 5–6–03; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2003–0139; FRL–7303–7]**

## Thiacloprid; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP–2003–0139, must be received on or before June 6, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mautz, Registration Division (7505C), Office of Pesticide Programs,

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6785; e-mail address: *mautz.marilyn@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0139. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *C. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0139. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0139.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0139. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

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*E. What Should I Consider as I Prepare My Comments for EPA?*

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1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition (PP) as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

## List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 22, 2003.

**Debra Edwards,**

*Director, Registration Division, Office of Pesticide Programs.*

## Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

## Bayer CropScience and IR-4

*PP# 9F6060 and PP# 3E6546*

EPA has received PP# 9F6060 from Bayer CropScience (formerly, Bayer Corporation, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120), P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709, and PP# 3E6546 from Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902 proposing, pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the insecticide thiacloprid ([3-[(6-chloro-3-pyridinyl)methyl]-2-thiazolidinylidene]cyanamide (CAS No. 111988–49–9)) in or on the raw agricultural commodities:

Bayer Petition (PP# 9F6060) proposes to establish tolerances for:

Apple, wet pomace at 0.6 parts per million (ppm).
Cattle, meat at 0.2 ppm.
Cattle, meat byproducts at 0.2 ppm.
Cotton, gin byproducts at 11.0 ppm.
Cotton, undelinted seed at 1.0 ppm.
Fruit, pomace, group 11 at 0.3 ppm.
Milk at 0.1 ppm.

IR-4 Petition (PP# 3E6546) proposes to establish tolerances for:

Fruit, stone, group 12 at 0.5 ppm.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism*. In plants, the metabolism of thiacloprid is adequately understood for the purposes of

establishing these proposed tolerances. Unchanged parent thiacloprid accounted for 70% or greater of the residues in all plant metabolism studies (cotton, tomato, and apple), with the exception of the material identified in cotton seed. In cotton seed, the main component was the 6-chloronicotinic acid metabolite, accounting for 45.8%. All residues contained the 6-chloro-pyridinyl moiety. In animals, parent thiacloprid was the major component in all edible tissues, milk, and eggs. All residues and metabolites in the animal tissues contained the 6-chloro-pyridinyl moiety, same as in the plant tissues. Therefore, the residues of concern are the combined residues of thiacloprid and its metabolites containing the 6-chloro-pyridinyl moiety, all calculated as thiacloprid.

2. *Analytical method*. The analytical method for determining residues in pome fruit and cotton samples is a common moiety method for thiacloprid and its metabolites containing the 6-chloro-pyridinyl moiety. This method utilizes oxidation, derivatization, and analysis by capillary gas chromatography with a mass-selective (MS) detector. There is a confirmatory method specific for thiacloprid and several metabolites utilizing high performance liquid chromatography (HPLC) with Electrospray MS/MS-detection. This HPLC/MS-MS method was used for analysis of the stone fruit samples. Thiacloprid and its metabolites are stable in cotton and pome fruit commodities for at least 24 months and in stone fruit commodities for at least 10 months when the commodities are frozen.

3. *Magnitude of residues—Cotton*—Field trials were conducted with cotton in 12 different locations, representing 6 different EPA regions. Three foliar applications were made to mature cotton plants at a rate of 0.1 lb active ingredient/acre (a.i./A) with 3 to 11 days between applications. The pre-harvest interval (PHI) ranged from 12 to 20 days. The highest average field trial was 0.73 ppm in undelinted cotton seed. For gin trash, the HAFT residue was 10.10 ppm. The processing study, conducted with cottonseed, indicated no concentration in any cottonseed processed commodities.

*Pome fruit (apple/pear)*—A total of 18 field trials (12 apple and 6 pear) were conducted in 6 different EPA regions. Applications were made as ground-based foliar sprays at 0.25 lb ai/A with 6- to 8-day intervals. The highest residue at 30-day PHI was 0.277 ppm, in apples. The highest residue at a 45-day PHI was 0.258 ppm, occurring in pears. Although residues in pome fruit did not consistently decline in relation to sampling intervals, residues were generally lower at the longer PHI (45 days) in harvest experiments. In the apple processing study, residues concentrated in the wet pomace (1.8X) but did not concentrate in the apple juice. A home processing study indicated significant reduction in residues.

*Stone fruits (sweet cherry/peach/plum)*—A total of 24 field trials (7 sweet cherry, 11 peach, and 6 plum) were conducted in different EPA regions (3 for sweet cherry, 7 for peach, and 3 for plum). Applications were made as ground-based foliar sprays at 0.25 lb ai/A with 6- to 8-day intervals. The highest residue at the 14-day PHI was 0.423 ppm, in peaches. The highest residue at a 28-day PHI was 0.359 ppm, occurring in peaches. Residues in stone fruit raw agricultural commodities (RACs) consistently declined in relation to sampling intervals, with lower residues at the longer PHI (28 days).

*B. Toxicological Profile*

1. *Acute toxicity*. The acute oral $LD_{50}$ values for thiacloprid technical ranged from 444 (female) to 836 (male) milligram/kilogram (mg/kg) in the rat. The acute dermal $LD_{50}$ was greater than 2,000 mg/kg in rats. The 4-hour rat inhalation $LD_{50}$ ranged from 1,223 (female) to >2,535 (male) mg/meter cubed ($m^3$) air (aerosol). Thiacloprid was not irritating to rabbit skin or eyes. Thiacloprid did not cause skin sensitization in guinea pigs.

2. *Genotoxicty*. Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration show thiacloprid to be non-genotoxic.

3.*Reproductive and developmental toxicity*. In a 2-generation reproduction study, Sprague-Dawley rats were administered dietary levels of thiacloprid at levels of 0, 50, 300, and 600 ppm. The no-observed-adverse-effect-levels (NOAELs) for reproductive parameters was established at 50 ppm, based on increased liver and thyroid weight gains in the parental and F1 generations. A developmental toxicity study was conducted with Wistar rats gavaged at 0, 2, 10, and 50 mg/kg. The following NOAELs were determined: Maternal toxicity, 10 mg/kg/day and developmental toxicity, 10 mg/kg/day. A developmental toxicity study was conducted with rabbits treated orally by gavage at 0, 2, 10, and 45 mg/kg. The following NOAELs were determined: Maternal toxicity, 2 mg/kg/body weight (bwt)/day and developmental toxicity, 2 mg/kg/day. From the developmental toxicity studies in rats and rabbits, no primary developmental toxic potential could be derived. Additionally, a developmental neurotoxicity study was conducted at dietary doses of 0, 50, 300, or 500 ppm in the female Sprague-Dawley rat. The targeted concentration of 50 ppm was considered a NOAEL for maternal toxicity and the F1 offspring. No specific neurobehavioral effects in the offspring were identified up to and including the highest dose tested of 500 ppm.

4. *Subchronic toxicity*. 90-day feeding studies were conducted in rats, mice, and dogs. In the subchronic rat and dog studies, the demonstrated NOAELs were 25 ppm and 1,000 ppm, respectively. The subchronic mouse study did not demonstrate a NOAEL at the lowest level (50 ppm) tested.

5.*Chronic toxicity*. A 2-year rat chronic toxicity/oncogenicity study demonstrated a NOAEL of 25 ppm. Liver enzyme induction occurred at doses of > 50 ppm. A 2-year mice oncogenicity demonstrated a NOAEL at the lowest dose of 30 ppm. A 1-year chronic toxicity study in dogs demonstrated a NOAEL of 250 ppm, with slight prostatic weight increases in some of the 1,000 ppm animals (possibly due to different maturation in the animals) being the only treatment-related findings. There is significant evidence that thiacloprid is not acting through a genetic mechanism (all genotoxicity studies are negative). Thiacloprid should be managed using a margin-of-exposure extrapolation. The dose response to thiacloprid shows the following pattern: First, at lower dose levels, thiacloprid induces liver enzymes. At moderate dose levels in animals, it increases liver enzymes and aromatase is induced. At the highest dose levels, repeated administration of thiacloprid induces liver enzymes, including aromatase, which leads to hormonal effects such as elevated estrogen levels, which indirectly cause uterine tumors in rats and ovarian luteomas in mice. High-dose thyroid tumors seen in the chronic rat study were determined to be related to thyroid hormone imbalance and not a direct effect of thiacloprid.

6. *Animal metabolism*. In animals, parent thiacloprid was the major component in all edible tissues, milk, and eggs. All residues and metabolites in the animal tissues contained the 6-chloro-pyridinyl moiety, same as in the plant tissues. Therefore, the residues of concern are the combined residues of thiacloprid and its metabolites containing the 6-chloro-pyridinyl moiety, all calculated as thiacloprid.

7. *Metabolite toxicology*. Two specific metabolites, KKO 2254 and WAK 6999, were examined toxicologically. In addition to negative Ames tests, the acute toxicological potential for both sexes, as measured by $LD_{50}$, was determined to be >2,000 mg/kg for both metabolites. In light of these findings no special toxicological concerns, exceeding that of thiacloprid, would be expected from the metabolites of the parent compound

8. *Endocrine disruption*. The toxicology database for thiacloprid is current and complete. Studies in this database include evaluation of the potential effects on reproduction and development and an evaluation of the pathology of the endocrine organs following short- or long-term exposure.

*C. Aggregate Exposure*

1. *Dietary exposure*. Acute and chronic dietary analyses were conducted to estimate exposure to potential thiacloprid residues in/on the following crops: Fruit, pome, group; fruit, stone, group; and cotton using the DEEM$^T$ software (Version 7.76) from Exponent, Inc. The 94–94,98 CSFII consumption database was used along with anticipated residues and processing factors where available. Projected percent crop treated values were incorporated into both the acute and chronic dietary exposure analyses at 20%, 10%, and 5% for pome fruit, stone fruit, and cotton, respectively. Exposure estimates to water were made based upon modeling. The acute reference dose (aRfD) (aRfD = 0.031 mg/kg/bwt/day) was based upon an acute NOEL of 3.1 mg/kg/bwt/day from the acute oral neurotoxicity study in rats and an uncertainty factor of 100. The chronic reference dose (cRfd) (cRfD = 0.012 mg/kg/bwt/day) was based upon a chronic NOEL of 1.2 mg/kg/bwt/day and an uncertainty factor of 100.

i. *Food*. The acute dietary exposure estimates at the 99.9$^{th}$ percentile for the U.S. population was calculated to be approximately 7% of the aRfD. The population subgroup with the highest exposure was non-nursing infants (<1year old) at approximately 15% of the aRfD. Chronic dietary exposure estimates from residues of thiacloprid for the U.S. population was 0.2% of the cRfD. The population subgroup with the highest exposure was non-nursing infants with 1% of the cRfD utilized.

ii. *Drinking water*. EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was used to perform the drinking water analysis for thiacloprid. This SOP utilizes a variety of tools to conduct drinking water assessment. These tools include water models such as SCI-GROW, FIRST, GENEEC, PRZM/EXAMS, and monitoring data. If monitoring data are not available then the models are used to predict potential residues in surface water and ground water. In the case of thiacloprid, monitoring data do not exist, therefore, FIRST and SCIGROW models were used to estimate a water residue. The calculated drinking water levels of comparison (DWLOC) for acute and chronic exposures for all adults and children greatly exceed the modeled thiacloprid drinking water estimated concentrations (DWEC). The acute DWLOC values are 1013 parts per billion (ppb) for adults (U. S. population) and 267 ppb for children. The worst case DWEC for acute scenarios is calculated to be 10.95 ppb using the FIRST surface water model. The chronic DWLOC values are 430 ppb for adults and 122 ppb for children. The DWEC for the worst case chronic scenario is 0.62 ppb (FIRST).

2. *Non-dietary exposure*. There are no current plans to support thiacloprid uses on turf or ornamental plants, including homeowner uses.

*D. Cumulative Effects*

Thiacloprid is thought to be part of a class of chemistry called the chloro-nicotinyls. For this class of chemistry and it's registered compounds EPA has not yet conducted a detailed review of common mechanisms to determine whether it is appropriate, or how to include these chemicals in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, thiacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of these tolerance actions; therefore, EPA has not assumed that thiacloprid has a common mechanism of toxicity with other substances.

*E. Safety Determination*

1. *U.S. population*. Using the conservative exposure assumptions described in Unit C. of this petition and based on the completeness of the toxicity data, it can be concluded that acute dietary exposure to residues of thiacloprid from all proposed uses will utilize less than 7% of the aRfD for the U.S. population and 15% of the aRfD for the most highly exposed subpopulation (non-nursing infants). EPA generally has no concerns for exposures below 100% of the reference dose (RfD), because the RfD represents the level at or below which exposure will not pose any appreciable risk to human health. Additionally, the acute DWLOC was calculated to be nearly 100 time greater than thiacloprid residues in water predicted by conservative models. The chronic dietary exposure occupies 0.2% of the cRfD for the U.S. population and 1% of the cRfD for the most highly exposed subpopulation (non-nursing infants). EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. The chronic DWLOC was calculated to be nearly 700 and 200 times greater than the thiacloprid residues in water predicted by conservative models. Therefore, there is a reasonable certainty that no harm will result to the general U.S. population from aggregate acute or chronic exposure to thiacloprid residues from proposed uses.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of thiacloprid, the data from developmental studies in both rat and rabbit and a 2-generation reproduction study in rats have been considered. The developmental toxicity studies evaluate potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through 2 generations, as well as any observed systemic toxicity.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal effects and the completeness of the toxicity database. Based on current toxicological data requirements, the toxicology database for thiacloprid relative to pre- and post-natal effects is complete. Further for thiacloprid, the NOEL of 1.2 mg/kg/bwt/day from the 2-year chronic toxicity/carcinogenicity study, which was used to calculate the cRfD (discussed in Unit C.1. of this petition), is already lower than the NOELs from the developmental studies in rats (10 mg/kg/bwt/day) and rabbits (2 mg/kg/bwt/day) and lower than the NOEL from the 2-year reproductive toxicity study in rats (50 mg/kg/bwt/day). Since a 100-fold uncertainty factor is already used to calculate the RfD, an additional safety factor for infants and children is not warranted.

Using the conservative exposure assumptions described in Unit C. of this petition, Bayer CropScience has concluded that the total aggregate exposure to thiacloprid from all

proposed uses will utilize at most 15% of the aRfD and 1% of the cRfD even for the most highly exposed population subgroups (non-nursing infants). Therefore, there is a reasonable certainty that no harm will result to infants and children from the currently proposed uses of thiacloprid.

*F. International Tolerances*

No CODEX Maximum Residue Levels (MRL's) have been established for residues of thiacloprid on any crops at this time.

[FR Doc. 03–11200 Filed 5–6–03; 8:45 am]
BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2003–0156; FRL–7305–7]**

## Cyazofamid; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP–2003–0156, must be received on or before June 6, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6742]; e-mail address: *mcneilly.dennis@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *EPA Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0156. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment

period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0156. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0156. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0156.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0156. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI To the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 23, 2003.

**Debra Edwards,**

*Director, Registration Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**ISK Biosciences Corporation**

*PP 1F6305*

EPA has received a pesticide petition [1F6305] from ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord OH 44077, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the fungicide cyazofamid, 4-chloro-2-cyano-N, N-dimethyl-5-(4-methylphenyl)-1H-imidazole-1-sulfonamide (CA), in or on the raw agricultural commodity (RAC) potatoes at 0.01 parts per million (ppm) and cucurbits at 0.1 ppm and the fungicide cyazofamid and the metabolite CCIM, 4-chloro-5-(4-methylphenyl)-1H-imidazole-2-carbonitrile (CA) in or on the RAC tomatoes at 0.2 ppm and wine grapes at 1.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism*. The plant metabolism studies in potatoes and tomatoes, together with the magnitude of the residue studies in potatoes, tomatoes and cucurbits, suggest that the tolerance for potatoes, tomatoes, and cucurbits should be based only on parent cyazofamid. However, magnitude of the residue studies on processed tomatoes indicate that both cyazofamid and CCIM are identifiable residues in tomato puree and paste. The nature and magnitude of the residue studies for potatoes showed that there were no detectable residues of cyazofamid or any of its metabolites in the RACs or processed commodities. Similar studies on fresh tomatoes indicated that the major identifiable and quantifiable residue is cyazofamid. Magnitude of the residue studies conducted on cucurbits (cucumber, summer squash and melon) also confirmed that the major residue is cyazofamid. Nature of the residue studies showed that no single identifiable residue represents more than about 7% of the total radioactive residue. The nature and magnitude of the residue studies on grapes showed that cyazofamid was the major identifiable residue with low levels of CCIM. The residue in wine made from cyazofamid treated grapes is CCIM. The tolerance expression for potatoes and cucurbits will include parent cyazofamid only. The tolerance expression for wine grapes and tomatoes will include parent, cyazofamid, and the metabolite CCIM.

2. *Analytical method*. An analytical enforcement method is available for determining cyazofamid plant residues in or on potatoes, cucurbits, tomatoes and wine grapes. Samples are chopped in a food chopper and a 20-g sub-sample is removed for extraction with 100 milliliter (mL) of acetonitrile (twice). The combined extracts are partitioned with hexane and then are reduced to 10 mL with a rotary evaporator. The sample is then partitioned between 100 mL of 2% aqueous sodium sulfate solution and 50 mL of methylene chloride (twice). The residue is dissolved and passed through a 2 gram (g) Florisil column followed by quantification by ultraviolet-high performance liquid chromatography (UV-HPLC).

3. *Magnitude of residues*. Residue data from 31 field trails (0– and 7–day pre-harvest intervals (PHIs)) on cucurbits [11 sites for cucumbers, 11 sites for muskmelons and 9 sites for summer squash] conducted from 1999–2001 showed that mean cyazofamid residues were 0.02 ppm for 0–day PHI and <0.01 ppm for 7–day PHI on the RAC commodities. The highest mean cyazofamid residue was 0.07 ppm at 0–day PHI on muskmelon. The highest 7–day PHI cyazofamid residue was 0.04 ppm on cucumbers. At both PHI's CCIM residues were <0.01 ppm except for 3 samples (2 sites, both 0–day PHI) which were at the 0.01 ppm LOQ. The sample with the highest total residue had 0.08 ppm (0.07 ppm cyazofamid + 0.01 ppm CCIM). The studies had a target of 6 applications of 0.071 lb. of active ingredient per acre (0.42 lb acre (a.i./acre) total) of the Cyazofamid 400SC formulation each at 7–day intervals.

Data from 18 field trials in potatoes conducted in 1999–2000 showed that no residues of cyazofamid or CCIM were observed in any of the RAC commodity at any location (7–day PHI). There were up to 10 applications of 0.071 lb. of active ingredient per acre (0.70 lb a.i./acre total) of the Cyazofamid 400SC formulation at 7–day intervals. The PHI for most trials was 7–days; however, residue dissipation studies with PHIs of 0-, 1-, 3- and 7–days were run at 2 locations. Maximum residues of 0.01 ppm of cyazofamid were seen at 0- and 1–day PHIs at one location and no residues were found at the other location. The results of a processing study in which the final application was at a 3X application rate showed that for samples taken with a 3–day PHI no detectable residues of cyazofamid or CCIM were found in potato flakes, chips or wet peels. Therefore, no concentration of residues occurred during processing.

For tomatoes, residues of cyazofamid were determined in the treated samples from 35 RAC trials (0- and 7–day PHI) conducted from 1999–2001. The mean per site residues ranged from non-detected (<0.01 ppm) to 0.15 ppm cyazofamid. CCIM residues of 0.01-0.02 ppm were found in samples from four of the sites. The sample with the maximum residue had 0.16 ppm cyazofamid and no detectable CCIM. The studies had a target of six applications of 0.071 lb of active ingredient per acre (0.42 lb a.i./acre total) of the Cyazofamid 400SC formulation each at 7–day intervals.

The results of a tomato processing study in which the final application was at a 3X application rate showed that for samples taken with a 3–day PHI, cyazofamid was <0.01 ppm in both tomato paste and puree. Tomato paste had 0.02 ppm CCIM and tomato puree had 0.01 ppm CCIM. Therefore, there is no concentration of residues during tomato processing.

Data from 15 field trials in grapes conducted from 1999–2001 in the United States, Argentina, Mexico and Europe showed that mean cyazofamid residues ranged from <0.01 to 0.34 ppm and mean CCIM residues ranged from < 0.01 to 0.02 ppm in the RAC commodity (21–day PHI) following eight applications of 0.081 to 0.089 lb. of active ingredient per acre (0.65 to 0.71 lb a.i./acre total) of the Cyazofamid 25SC formulation each at 10– to 16–day intervals.

Grapes from six of the sites were processed into must and wine. Most samples had cyazofamid residues ranging from 0.01 to 0.09 ppm. The CCIM residues in must ranged from <0.01 to 0.01 ppm. Cyazofamid residues in wine were all <0.01 ppm. CCIM residues in wine ranged from <0.01 ppm to 0.02 ppm.

*B. Toxicological Profile*

1. *Acute toxicity*. Results from a battery of acute toxicity studies place technical cyazofamid in Toxicity Category IV for oral $LD_{50}$, inhalation $LC_{50}$ and dermal and eye irritation , and Category III for dermal $LD_{50}$. Technical cyazofamid is not a dermal sensitizer. In an acute neurotoxicity study, no treatment related effects were observed at any dose. The no observed effect level (NOEL) was 2,000 milligrams/kilogram (mg/kg) bodyweight (bwt).

2. *Genotoxicity*. A battery of five tests has been conducted to assess the genotoxic potential of technical

cyazofamid. Assays conducted included *in vitro* reverse gene mutation tests in bacteria and an *in vitro* forward gene mutation test in a mammalian cell system, a chromosomal damage test in mammalian cells, a DNA repair test in bacteria, and an *in vivo* micronucleus test in mice. Cyazofamid did not elicit a genotoxic response in any of the studies conducted.

3. *Reproductive and developmental toxicity*. In a two-generation reproductive toxicity study, the only effects observed were body weight effects which were observed at 20,000 ppm in dams during gestation and lactation and in weanling pups. No reproductive effects were observed. The NOEL for reproductive effects was 20,000 ppm (1,338 mg/kg bwt/day). The NOEL for parental toxicity was 2,000 ppm (134 mg/kg bwt/day). In a rat developmental study, cyazofamid was dosed by gavage from Days 0 to 19 of gestation. There were no treatment-related effects observed in the study. The NOEL for maternal and developmental effects was 1,000 mg/kg bwt/day. In a rabbit developmental study, pregnant rabbits were dosed with cyazofamid by gavage on Days 4 to 28 of gestation. There were no treatment-related effects observed in the study. The NOEL for maternal and developmental effects was 1,000 mg/kg bwt/day. The developmental studies (prenatal developmental studies in rat and rabbit and the two generation reproduction study in rat) provided no indication of increased sensitivity of rats or rabbits from *in utero* or postnatal exposure to cyazofamid. Cyazofamid is not a developmental or reproductive toxicant.

4. *Subchronic toxicity*. The oral toxicity of cyazofamid was investigated in rats and dogs in 13–week studies. The exposure was by dietary administration for the rats and by capsule for the dogs. There were no treatment-related effects observed in dogs up to 1,000 mg/kg bwt/day which was the highest dose tested. In rats, treated at 5,000 ppm there was a treatment related increase in kidney and liver weights and increased observation of *basophilic tubules*. The latter was observed only in males. The NOEL was 500 ppm which was equivalent to a dosage of 29.9 mg/kg bwt/day to males and 33.3 mg/kg bwt/day to females.

5. *Chronic toxicity*. A combined chronic and oncogenicity study was conducted in rats. Cyazofamid was administered continuously for a period of 104 weeks to male and female Fischer rats. Cyazofamid was not carcinogenic in this study. The NOEL for chronic effects was 500 ppm (17 mg/kg bwt/day) based on kidney and liver weight differences and increases in urine volume and chloride levels at 5,000 ppm. In a long-term feeding study, mice were dosed with cyazofamid in the diet for 78 weeks. No treatment related effects were observed and it was concluded, that cyazofamid was not carcinogenic. The NOEL was 7,000 ppm (985 and 1,203 mg/kg bwt/day for males and females, respectively). In a chronic dog study, four groups of six dogs/sex/group received the test material via capsule for 52 weeks. No treatment related effects were observed. The NOEL was 1,000 mg/kg bwt/day.

6. *Animal metabolism*. Studies on the metabolism of cyazofamid in animals using radioactive test material have been conducted with cyazofamid, labeled with 14C in two positions, the benzene [14C-Bz]- or imidazole [14C-Im] position. Absorption is rapid, but the percentage of cyazofamid absorbed after an oral dosage decreases as the dosage is increased. All absorbed radiocarbon is rapidly eliminated with urinary and biliary elimination of radiocarbon nearly complete within 24 hours. The metabolic pathway of cyazofamid includes the rapid hydrolysis of the dimethylsulfonamide group and the oxidation of the benzyl methyl group.

7. *Metabolite toxicology*. Comparison of the metabolism of cyazofamid by plants and in animals indicates that a number of the identified metabolites are common to both plants and animals but metabolism in plants is more extensive than in animals. The data indicate that the final products of the metabolism of cyazofamid in animals and plants represent differences in the extent of metabolism. Several of the metabolites resulting from cyazofamid are similar in plants and animals and, therefore, have already been evaluated toxicologically.

8. *Endocrine disruption*. An evaluation of the potential effects on the endocrine systems of mammals has not been determined; however, no evidence of such effects was reported in subchronic, chronic or reproductive toxicology. There was no observed pathological finding of the endocrine organs in these studies, and there were no reproductive effects at the maximum dose tested of 20,000 ppm. There is no evidence at this time that cyazofamid causes endocrine effects.

*C. Aggregate Exposure*

1. *Dietary exposure*. A reference dose (RfD) of 0.17 mg/kg bwt/day is proposed for humans, based on the NOEL from the 2 year rat study (17 mg/kg bwt/day) and dividing by an uncertainty factor of 100. The acute NOEL of 100 mg/kg bwt is from the acute neurotoxicity study adjusted for oral absorption of 5%. No treatment related effects were observed at any dose level.

i. *Food*. Tier 1 chronic and acute dietary exposure analyses were conducted for cyazofamid in/on cucurbits, potatoes, tomatoes and wine grapes to determine the exposure contribution of these commodities to the diet and to ascertain the chronic and acute risk potential. The estimates were based on proposed tolerance level residues for all crops, potato and tomato processing studies, market share assumptions of 100% crop treated, and consumption data from the 1994 through 1996 United States Department of Agriculture (USDA) continuing survey of food intake.

Even using all of the worst case exposure scenarios listed above, the Tier 1 chronic dietary exposure estimates resulted in an estimated exposure for the U.S. population of 0.000594 mg/kg bwt/day. This exposure corresponds to 0.3% of the RfD of 0.17 mg/kg bwt/day. The highest exposure estimate was calculated for the children 1–6 years population subgroup. This exposure was determined to be 0.000939 mg/kg bwt/day (0.6% of the RfD).

The Tier 1 acute assessment for the U.S. population resulted in a margin of exposure (MOE) of 35,789 at the 95$^{th}$ percentile. This corresponded to an estimated exposure of 0.002793 mg/kg bwt/day. The highest acute exposure estimate (95$^{th}$ percentile) was observed in children 1–3 years subpopulation: 0.004580 mg/kg bwt/day. This correlates to an MOE of 21,833. It can be concluded that acute or long-term dietary exposure to cyazofamid through residues on treated cucurbits, potatoes, tomatoes and imported wine grapes should not be of cause for concern.

ii. *Drinking water*. Since cyazofamid is intended for application outdoors to field grown potato, tomato and cucurbits crops, the potential exists for parent and or metabolites to reach ground or surface water that may be used for drinking water. The calculated drinking water levels of comparison (DWLOCs) for chronic exposure for adult males, adult females and toddlers were estimated to be 5,929 parts per billion (ppb), 5,083 ppb, and 1,691 ppb, respectively. The calculated DWLOCs for acute exposure for all adults, adult females and toddlers were estimated to be 34,902 ppb, 29,923 ppb, and 9,954 ppb, respectively. The chronic and acute DWLOC values are well above the modeled chronic and acute drinking water estimated concentrations (DWECs) of 0.023 ppb (generic expected estimated concentration (GENEEC) 56–day) and 1.38 ppb (GENEEC

instantaneous value), respectively. Therefore, there is comfortable certainty that no harm will result from combined dietary food and water, exposure due to the use of cyazofamid on cucurbits, potatoes and tomatoes.

2. *Non-dietary exposure*. No petition for registration of cyazofamid is being made for either indoor or outdoor residential use. Non-occupational exposure of cyazofamid to the general population is, therefore, not expected and is not considered in aggregate exposure estimates.

*D. Cumulative Effects*

Cyazofamid is a cyanoimidazole fungicide. Since there are no other members of this class of fungicides, it is considered unlikely that cyazofamid would have a common mechanism of toxicity with any other pesticide in use at this time.

*E. Safety Determination*

1. *U.S. population*. Dietary and occupational exposure will be the major routes of exposure to the U.S. population. Ample margins of safety have been demonstrated for both situations. For the U.S. population, the chronic dietary exposure to cyazofamid is 0.000594 mg/kg bwt/day, which utilizes 0.3% of the RfD for the overall U.S. population, assuming 100% of the crops are treated. The acute dietary exposure to the U.S. population is 0.002793 mg/kg bwt/day (95$^{th}$ percentile) resulting in a MOE of 35,789.

Using only pesticide handlers exposure data base (PHED) data levels A and B (those with a high level of confidence), MOE for occupational exposure is 5,195 for mixer/loaders, and 5,884 for aerial applicators. Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is a reasonable certainty that no harm will result from the aggregate exposure of residues of cyazofamid including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children*. Chronic dietary exposure of the most highly exposed subgroup in the population, children 1–6, is 0.000939 mg/kg bwt/day or 0.6% of the RfD. The acute dietary exposure of the most exposed subgroup, children 1–3, is 0.00458 mg/kg bwt/day. This correlates to an MOE of 21,833.

There are no residential uses of cyazofamid. Based on the completeness and reliability of the toxicity data, the lack of toxicological endpoints of special concern, the lack of any indication of greater sensitivity of children, and the conservative exposure assessment; there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure to residues of cyazofamid from all anticipated sources of dietary and non-occupational exposure. Accordingly, there is no need to apply an additional safety factor for infants and children.

*F. International Tolerances*

There are presently no Codex maximum residue limits established for residues of cyazofamid on any crop.

[FR Doc. 03–11198 Filed 5–6–03; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2003–0111; FRL–7305–1]**

## Folpet; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP–2003–0111 must be received on or before June 6, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: jackson.sidney@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *EPA Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0111. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in

the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0111. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0111. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0111.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0111. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 24, 2003.

**Debra Edwards,**

*Director, Registration Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Makhteshim-Agan of North America, Inc., 551 Fifth Avenue, Suite 1100, New York, NY 10176, the registrant, and represents the view of Makhteshim-Agan. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Makhteshim-Agan of North America, Inc.**

**Interregional Research Project Number 4 (IR-4)**

*PP 1E6310*

EPA has received a pesticide petition (PP 1E6310) from the IR-4 Project, Center for Minor Crop Pest Management, Rutgers, The State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.191 by establishing a tolerance for residues of folpet N-[(trichloromethyl)thio]phthalimide] in or on the raw agricultural commodity hops, dried cones at 120 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* The qualitative nature of the residue of folpet in plants is adequately understood based on acceptable avocado, grape and wheat metabolism studies. The metabolism of folpet in livestock is adequately understood. Based on the results observed in the metabolism studies along with supplementary toxicity data on the degradates, secondary residues such as phthalimide and phthalic acid are not expected to be of toxicological concern. The Agency has concluded that the residue of concern is folpet per se.

2. *Analytical method.* An adequate analytical method, gas chromatography/electron capture detector (GC/ECD), is available for enforcing tolerances of folpet in or on plant commodities. The method of detection has a limit of detection (LOD) of 0.01 milligram/kilogram (mg/kg) and a limit of quantitation (LOQ) of 0.02 mg/kg in dried hops.

3. *Magnitude of residues.* A complete set of residue data have been submitted in support of the petitioned tolerances. The results included three field trials from Idaho, Oregon, and Washington, and a processing study that was conducted in Germany. After kiln drying the measured residues in hops, dried cones ranged from 2.4 to 91.8 ppm. Folpet was not detectable in any of the processed hop commodities (LOD for spent hops = 0.01 ppm; beer = 0.003 ppm). The generated data support the requested tolerance.

*B. Toxicological Profile*

In the **Federal Register** of January 9, 2003 (68 FR 1182), (FRL–7287–7). EPA published the Notice of Filing proposing the establishment of a tolerance for residues of folpet on imported hops only, as no U.S. registrations for hops exist at this time. The publication summarizes in detail the current state of knowledge regarding the toxicological profile of folpet including aggregate exposure assessment and determination of safety. Interested readers are referred to that document for specific information as follows:

- Toxicological profile (Unit II.B.)
- Aggregate exposure (Unit II.C.)
- Cumulative effects (Unit II.D.)
- Safety determination (Unit II.E.)

*C. International*

Germany has established an MRL (maximum residue limit) of 120 ppm for residues of folpet in or on dried hops. No Codex MRL for hops exists.

[FR Doc. 03–11199 Filed 5–6–03; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2003–0149; FRL–7305–8]**

## Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials were granted during the period January 1, 2003 to March 31, 2003 to control unforseen pest outbreaks.

**FOR FURTHER INFORMATION CONTACT:** See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460–0001; telephone number: (703) 308–9366.

**SUPPLEMENTARY INFORMATION:** EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0149. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

## II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

## III. Emergency Exemptions and Denials

### *A. U. S. States and Territories*

**Alabama**

Department of Agriculture and Industries

*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 12, 2003 to February 1, 2004. Contact: (Barbara Madden)

**Arkansas**

State Plant Board

*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 12, 2003 to February 1, 2004. Contact: (Barbara Madden)

EPA authorized the use of fenbuconazole on blueberry to control mummy berry; March 4, 2003 to June 30, 2003. Contact: (Andrea Conrath)

**California**

Environmental Protection Agency, Department of Pesticide Regulation

*Specific*: EPA authorized the use of maneb on walnuts to control bacterial blight; January 31, 2003 to June 15, 2003. Contact: (Libby Pemberton)

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 24, 2003 to February 1, 2004. Contact: (Barbara Madden)

**Colorado**

Department of Agriculture

*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)

EPA authorized the use of difenoconazole on sweet corn seed to control various fungal pathogens; February 25, 2003 to February 25, 2004. Contact: (Andrea Conrath)

EPA authorized the use of sulfentrazone on potatoes to control ALS-inhibitor and triazine-resistant kochia; March 2, 2003 to June 15, 2003. Contact: (Andrew Ertman)

EPA authorized the use of sulfentrazone on sunflowers to control broadleaf weeds; April 1, 2003 to July 1, 2003. Contact: (Andrew Ertman)

EPA authorized the use of dimethenamid-p on sugarbeets to control various nightshade species, lambsquarter, redroot pigweed, barnyardgrass and the suppression of ALS-resistant kochia; April 10, 2003 to July 10, 2003. Contact: (Barbara Madden)

EPA authorized the use of lambda-cyhalothrin on barley to control the Russian wheat aphid and the cereal leaf beetle; April 15, 2003 to July 15, 2003. Contact: (Andrew Ertman)
EPA authorized the use of tebuconazole on sunflower to control rust; July 1, 2003 to August 25, 2003. Contact: (Andrea Conrath)

**Connecticut**
Department of Environmental Protection
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 4, 2003 to February 1, 2004. Contact: (Barbara Madden)

**Delaware**
Department of Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 13, 2003 to February 1, 2004. Contact: (Barbara Madden)

**Florida**
Department of Agriculture and Consumer Services
*Specific*: EPA authorized the use of fenbuconazole on grapefruit to control greasy spot; February 4, 2003 to October 1, 2003. Contact: (Andrea Conrath)
EPA authorized the use of pyriproxyfen on legumes to control whiteflies; February 7, 2003 to February 7, 2004. Contact: (Andrea Conrath)

**Georgia**
Department of Agriculture
*Specific*: EPA authorized the use of fenbuconazole on blueberry to control mummy berry; January 14, 2003 to July 1, 2003. Contact: (Andrea Conrath)

**Idaho**
Department of Agriculture
*Specific*: EPA authorized the use of pendimethalin on mint to control kochia and redroot pigweed; February 7, 2003 to December 31, 2003. Contact: (Libby Pemberton)
EPA authorized the use of carfentrazone-ethyl on hops to control hop suckers to indirectly control powdery mildew; March 20, 2003 to August 15, 2003. Contact: (Barbara Madden)
EPA authorized the use of dimethenamid-p on sugar beets to control hairy nightshade, redroot pigweed, and yellow nutsedge; April 1, 2003 to July 15, 2003. Contact: (Barbara Madden)

**Illinois**
Department of Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)

**Indiana**
Office of Indiana State Chemist
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 12, 2003 to February 1, 2004. Contact: (Barbara Madden)

**Iowa**
Department of Agriculture and Land Stewardship
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 20, 2003 to February 1, 2004. Contact: (Barbara Madden)

**Kansas**
Department of Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)
EPA authorized the use of propicnazole on sorghum to control sorghum ergot; February 12, 2003 to February 12, 2004. Contact: (Libby Pemberton)
EPA authorized the use of fluroxypr on pastures and rangeland to control the noxious weed species sericea lespedeza (Lespedeza cuneata); March 30, 2003 to July 30, 2003. Contact: (Barbara Madden)
EPA authorized the use of sulfentrazone on sunflowers to control kochia; April 15, 2003 to July 1, 2003. Contact: (Andrew Ertman)
EPA authorized the use of tebuconazole on sunflower to control rust; June 1, 2003 to September 15, 2003. Contact: (Andrea Conrath)

**Kentucky**
Department of Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)

**Louisiana**
Department of Agriculture and Forestry
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)
EPA authorized the use of 3-chloro-p-touidine hydrochloride on rice to control various birds, including red-winged blackbirds; February 14, 2003 to April 15, 2003. Contact: (Libby Pemberton)

**Maine**
Department of Agriculture, Food, and Rural Resources
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 13, 2003 to February 1, 2004. Contact: (Barbara Madden)
EPA authorized the use of propiconazole on blueberry to control mummy berry; April 15, 2003 to June 15, 2003. Contact: (Andrea Conrath)

**Maryland**
Department of Agriculture
*Specific*: EPA authorized the use of s-metolachlor on tomatoes to control eastern black nightshade and yellow nutsedge; April 10, 2003 to July 31, 2003. Contact: (Andrew Ertman)

**Massachusetts**
Massachusetts Department of Food and Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 13, 2003 to February 1, 2004. Contact: (Barbara Madden)
EPA authorized the use of propyzamide on cranberries to control dodder; March 30, 2003 to June 15, 2003. Contact: (Andrew Ertman)

**Michigan**
Michigan Department of Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 13, 2003 to February 1, 2004. Contact: (Barbara Madden)
EPA authorized the use of tebuconazole on asparagus to control rust; March 31, 2003 to November 1, 2003. Contact: (Barbara Madden)

**Minnesota**
Department of Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 12, 2003 to February 1, 2004. Contact: (Barbara Madden)
EPA authorized the use of sulfentrazone on horseradish to control broadleaf weeds; April 1, 2003 to July 1, 2003. Contact: (Andrew Ertman)
EPA authorized the use of sulfentrazone on sunflowers to control kochia; April 15, 2003 to June 30, 2003. Contact: (Andrew Ertman)
EPA authorized the use of dimethenamid-p on sugarbeets to control waterhemp and Powell amaranth; May 1, 2003 to August 1, 2003. Contact: (Barbara Madden)
EPA authorized the use of lambda-cyhalothrin on wild rice to control rice worms; August 1, 2003 to September 10, 2003. Contact: (Andrew Ertman)

**Mississippi**
Department of Agriculture and Commerce
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 4, 2003 to February 1, 2004. Contact: (Barbara Madden)

**Missouri**
Department of Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 4, 2003 to February 1, 2004. Contact: (Barbara Madden)
EPA authorized the use of sulfentrazone on sunflowers to control broadleaf

weeds; April 1, 2003 to July 31, 2003. Contact: (Andrew Ertman)

**Montana**

Department of Agriculture

*Specific*: EPA authorized the use of sulfentrazone on chick peas to control wild buckwheat; March 13, 2003 to June 30, 2003. Contact: (Andrew Ertman)

EPA authorized the use of sulfentrazone on dry peas to control wild buckwheat; March 13, 2003 to June 30, 2003. Contact: (Andrew Ertman)

EPA authorized the use of sulfentrazone on sunflowers to control kochia; March 15, 2003 to June 30, 2003. Contact: (Andrew Ertman)

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 30, 2003 to February 1, 2004. Contact: (Barbara Madden)

EPA authorized the use of dimethenamid-p on sugar beets to control hairy nightshade and redroot pigweed; May 1, 2003 to July 31, 2003. Contact: (Barbara Madden)

**Nebraska**

Department of Agriculture

*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 17, 2003 to February 1, 2004. Contact: (Barbara Madden)

EPA authorized the use of sulfentrazone on chickpeas to control broadleaf weeds; March 27, 2003 to July 1, 2003. Contact: (Andrew Ertman)

EPA authorized the use of sulfentrazone on sunflowers to control broadleaf weeds; April 1, 2003 to July 1, 2003. Contact: (Andrew Ertman)

EPA authorized the use of sulfentrazone on potatoes to control ALS-inhibitor and triazine-resistant Palmer amaranth, redroot pigweed, and common waterhemp; April 10, 2003 to June 30, 2003. Contact: (Andrew Ertman)

EPA authorized the use of dimethenamid-p on sugar beets to control ALS-resistant broadleaf weeds; April 10, 2003 to July 31, 2003. Contact: (Barbara Madden)

**New Jersey**

Department of Environmental Protection

*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 30, 2003 to February 1, 2004. Contact: (Barbara Madden)

EPA authorized the use of imidacloprid on blueberries to control blueberry aphids; April 10, 2003 to August 10, 2003. Contact: (Andrew Ertman)

EPA authorized the use of propyzamide on cranberries to control dodder; April 30, 2003 to December 15, 2003. Contact: (Andrew Ertman)

EPA authorized the use of imidacloprid on blueberries to control oriental beetles; May 15, 2003 to September 15, 2003. Contact: (Andrew Ertman)

**New Mexico**

Department of Agriculture

*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 12, 2003 to February 1, 2004. Contact: (Barbara Madden)

**North Carolina**

Department of Agriculture

*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)

EPA authorized the use of fenbuconazole on blueberry to control mummy berry; January 24, 2003 to August 31, 2003. Contact: (Andrea Conrath)

**North Dakota**

Department of Agriculture

*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 17, 2003 to February 1, 2004. Contact: (Barbara Madden)

EPA authorized the use of sulfentrazone on flax to control kochia and ALS-resistant kochia; April 1, 2003 to June 30, 2003. Contact: (Andrew Ertman)

EPA authorized the use of sulfentrazone on chick peas to control wild buckwheat; April 1, 2003 to June 30, 2003. Contact: (Andrew Ertman)

EPA authorized the use of sulfentrazone on field peas to control wild buckwheat; April 1, 2003 to June 30, 2003. Contact: (Andrew Ertman)

EPA authorized the use of sulfentrazone on sunflowers to control kochia; April 15, 2003 to June 30, 2003. Contact: (Andrew Ertman)

EPA authorized the use of dimethenamid-p on sugarbeets to control waterhemp and Powell amaranth; May 1, 2003 to August 1, 2003. Contact: (Barbara Madden)

**Ohio**

Department of Agriculture

*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)

**Oklahoma**

Department of Agriculture

*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 12, 2003 to February 1, 2004. Contact: (Barbara Madden)

EPA authorized the use of sulfentrazone on sunflowers to control broadleaf weeds; April 15, 2003 to July 15, 2003. Contact: (Andrew Ertman)

**Oregon**

Department of Agriculture

*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)

EPA authorized the use of pendimethalin on mint to control kochia and redroot pigweed; February 7, 2003 to December 31, 2003. Contact: (Libby Pemberton)

EPA authorized the use of propiconazole on filberts (hazelnuts) to control Eastern filbert blight; February 15, 2003 to May 30, 2003. Contact: (Dan Rosenblatt)

EPA authorized the use of fenbuconazole on blueberry to control mummy berry; March 4, 2003 to May 31, 2003. Contact: (Andrea Conrath)

EPA authorized the use of carfentrazone-ethyl on hops to control hop suckers to indirectly control powdery mildew; March 20, 2003 to August 15, 2003. Contact: (Barbara Madden)

EPA authorized the use of dimethenamid-p on sugar beets to control hairy nightshade, redroot pigweed, and yellow nutsedge; April 1, 2003 to July 15, 2003. Contact: (Barbara Madden)

EPA authorized the use of fluroxypyr on sweet corn and field corn to control volunteer potatoes; April 15, 2003 to August 1, 2003. Contact: (Andrew Ertman)

**Pennsylvania**

Department of Agriculture

*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 24, 2003 to February 1, 2004. Contact: (Barbara Madden)

**Rhode Island**

Department of Environmental Management

*Specific*: EPA authorized the use of propyzamide on cranberries to control dodder; March 30, 2003 to June 15, 2003. Contact: (Andrew Ertman)

**South Carolina**

Clemson University

*Specific*: EPA authorized the use of fenbuconazole on blueberry to control mummy berry; January 24, 2003 to August 31, 2003. Contact: (Andrea Conrath)

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 13, 2003 to February 1, 2004. Contact: (Barbara Madden)

**South Dakota**

Department of Agriculture

*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 4, 2003 to February 1, 2004. Contact: (Barbara Madden)

EPA authorized the use of sulfentrazone on chick peas to control kochia; April 1, 2003 to June 30, 2003. Contact: (Andrew Ertman)
EPA authorized the use of sulfentrazone on dry peas to control kochia; April 1, 2003 to June 30, 2003. Contact: (Andrew Ertman)
**Tennessee**
Department of Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 4, 2003 to February 1, 2004. Contact: (Barbara Madden)
**Texas**
Department of Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 12, 2003 to February 1, 2004. Contact: (Barbara Madden)
EPA authorized the use of sulfentrazone on sunflowers to control broadleaf weeds; March 20, 2003 to June 30, 2003. Contact: (Andrew Ertman)
**Utah**
Department of Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 4, 2003 to February 1, 2004. Contact: (Barbara Madden)
**Vermont**
Department of Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 30, 2003 to February 1, 2004. Contact: (Barbara Madden)
**Virginia**
Department of Agriculture and Consumer Services
*Specific*: EPA authorized the use of s-metolachlor on tomatoes to control eastern black nightshade and yellow nutsedge; February 12, 2003 to December 1, 2003. Contact: (Andrew Ertman)
EPA authorized the use of s-metolachlor on tomatoes to control weeds; February 12, 2003 to December 31, 2003. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 14, 2003 to February 1, 2004. Contact: (Barbara Madden)
**Washington**
Department of Agriculture
*Specific*: EPA authorized the use of pendimethalin on mint to control kochia and redroot pigweed; February 7, 2003 to December 31, 2003. Contact: (Libby Pemberton)
EPA authorized the use of propiconazole on blueberry to control mummy berry; March 5, 2003 to June 10, 2003. Contact: (Andrea Conrath)
EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; March 15, 2003 to February 28, 2004. Contact: (Andrew Ertman)
EPA authorized the use of carfentrazone-ethyl on hops to control hop suckers to indirectly control powdery mildew; March 20, 2003 to August 15, 2003. Contact: (Barbara Madden)
EPA authorized the use of fluroxypyr on sweet corn and field corn to control volunteer potatoes; April 15, 2003 to August 1, 2003. Contact: (Andrew Ertman)
**West Virginia**
Department of Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 17, 2003 to February 1, 2004. Contact: (Barbara Madden)
**Wisconsin**
Department of Agriculture, Trade, and Consumer Protection
*Specific*: EPA authorized the use of mancozeb on ginseng to control stem and leaf blight; January 17, 2003 to October 15, 2003. Contact: (Libby Pemberton)
EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)
EPA authorized the use of dimethenamid-p on dry bulb onions grown on muck soils to control yellow nutsedge and other broadleaf weeds; April 1, 2003 to July 31, 2003. Contact: (Barbara Madden)
EPA authorized the use of sulfentrazone on horseradish to control broadleaf weeds; April 15, 2003 to July 15, 2003. Contact: (Andrew Ertman)
EPA authorized the use of sulfentrazone on strawberries to control common groundsel; June 20, 2003 to December 15, 2003. Contact: (Andrew Ertman)
**Wyoming**
Department of Agriculture
*Specific*: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; March 13, 2003 to February 1, 2004. Contact: (Barbara Madden)
EPA authorized the use of dimethenamid-p on sugar beets to control ALS-resistant broadleaf weeds; April 10, 2003 to July 31, 2003. Contact: (Barbara Madden)
EPA authorized the use of sulfentrazone on sunflowers to control broadleaf weeds; April 15, 2003 to June 30, 2003. Contact: (Andrew Ertman)

**List of Subjects**

Environmental protection, Pesticides and pest.

Dated: April 28, 2003.

**Debra Edwards,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 03–11196 Filed 5–6–03; 8:45 am]
**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2003–0150; FRL–7304–8]**

## Myclobutanil; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the California Environmental Protection Agency to use the pesticide myclobutanil (CAS No. 88671–89–0) to treat up to 7,000 acres of artichokes to control powdery mildew (*Leveillula taurica*). The applicant proposes a use which has been requested in 3 or more previous years, and a petition for tolerance has not yet been submitted to the Agency.

**DATES:** Comments, identified by docket ID number OPP–2003–0150, must be received on or before May 22, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: *madden.barbara@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are a Federal or State Government Agency involved in administration of environmental quality programs.

Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0150. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0150. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0150. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0150.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm.

119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0150. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

## II. Background

*A. What Action is the Agency Taking?*

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State Agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The California Environmental Protection Agency, Department of Pesticide Regulation has requested the Administrator to issue a specific exemption for the use of myclobutanil on artichokes to control powdery mildew. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts artichoke growers in California have suffered from infestations of powdery mildew, which has resulted in EPA's authorization of section 18 exemptions for use of triadimefon between 1988–1997 to control the disease. In 1998, the State began to request use of myclobutanil. *Leveillula tauruca* was first recognized as a disease on artichoke in 1985. The disease initially infects older leaves that are close to the ground and well shaded. If left untreated the disease destroys the affected leaf, causing it to collapse and dry up prematurely, thereby reducing the amount of photosynthetic area available to the plant. Overall effects of the disease include smaller, poor quality buds, and delayed yield which can cause an oversupply of artichokes on the market, thereby reducing prices to growers. In the past the Agency has determined that the situation is urgent and non-routine and that without myclobutanil growers are likely to suffer significant economic losses. To date, the State claims the situation is the same and no new products are available to control powdery mildew on artichokes.

The Applicant proposes to make no more than four applications of myclobutanil, using Rally 40 W, EPA Registration No. 707–215, applied at 0.1 pounds active ingredient per acre. Up to 7,000 acres of artichokes grown in California may be treated. Applications will be made from August 18, 2003 through August 17, 2004. Based on the maximum number of applications at the highest application rate, up to 2,800 pounds of myclobutanil could be applied.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing a use which has been requested in 3 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the California Environmental Protection Agency, Department of Pesticide Regulation.

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 21, 2003.

**Debra Edwards,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 03–11197 Filed 5–6–03; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7494–8]**

## Proposed CERCLA Administrative Cost Recovery Settlement; Franklin Street Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Franklin Street Superfund site in Malden, Massachusetts with the following settling parties: Robert M. Trager, Steven J. Trager, Ada Trager, Carol Shaloo Trager, and Ada Trager as Trustee of the Twenty Two Realty Trust. The settlement requires the settling parties to pay $125,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at Superfund Reading Room, U.S. Environmental Protection Agency Regional Office, located at One Congress Street, Suite 1100, Boston, Massachusetts 02114.

**DATES:** Comments must be submitted on or before June 6, 2003.

**ADDRESSES:** The proposed settlement is available for public inspection at the Superfund Reading Room, U.S. Environmental Protection Agency Regional Office, located at One Congress Street, Suite 1100, Boston, Massachusetts 02114.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed Agreement and Covenant Not to Sue can be obtained from Rona H. Gregory, Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RAA, Boston, Massachusetts 02214,

(617) 918–1096. Comments should reference the Franklin Street Superfund Site in Malden, Massachusetts, and EPA Docket No. *01–2003–0027* and should be addressed to Regional Hearing Clerk, U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Boston, MA 02114.

Dated: April 28, 2003.

**Susan Studlien,**

*Acting Director, Office of Site Remediation and Restoration.*

[FR Doc. 03–11330 Filed 5–6–03; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act; Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Wednesday, May 7, 2003, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's corporate and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–3742.

Dated: May 2, 2003.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 03–11415 Filed 5–5–03; 8:59 am]

**BILLING CODE 6714–01–M**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 010982–034.

*Title:* Bahamas Shipowner Association.

*Parties:* Tropical Shipping and Construction Co., Ltd.; Arawak Line Ltd.; Pioneer Shipping Ltd.; Crowley Liner Services, Inc.; Seaboard Marine, Ltd.; G&G Marine, Inc.; Caicos Cargo Ltd.

*Synopsis:* The agreement: (1) Deletes Bahamas Ro Ro Service (Freeport) from membership; (2) clarifies rate authority, expands and consolidates it in Article 5.2; (3) redefines appointment and authority of Executive Director in Article 6.1; (4) clarifies the parties' authority to discuss, only, vessel capacity; (5) modifies language to assure consistent use of terms, deletes obsolete language, removes language required only in conference agreements; (6) modifies references to aggregation of individual service contracts and modifies other references to service contracts to conform to FMC requirements; (7) reemphasizes need to file minutes of meeting in accordance with regulations.

*Agreement No.:* 011851.

*Title:* CMA CGM/CSCL PGX Slot Charter Agreement.

*Parties:* CMA CGM S.A.; China Shipping Container Lines, Co. Ltd.

*Synopsis:* The proposed agreement would authorize China Shipping to charter 100 TEUs per weekly sailing on 8 vessels operated by CMA CGM pursuant to another FMC Agreement, No. 011847. CMA CGM's service operates between the U.S. Gulf Coast and the Far East with stops in Mexico, Panama, and Jamaica.

*Agreement No.:* 011852.

*Title:* Marine Terminal Discussion Agreement.

*Parties:* American President Lines, Ltd.; APL Co. Pte Ltd.; COSCO Americas, Inc.; Evergreen Marine Corporation; Hanjin Shipping Company, Ltd.; Maersk Sealand; MOL (America) Inc.; NYK (North America) Inc.; Yang Ming Transport Corp.; Zim-American Israeli Shipping Co., Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Eagle Marine Services Ltd.; Global Terminal & Container Services, Inc.; Husky Terminal & Stevedoring, Inc.; International Transportation Service, Inc.; Maersk Pacific Ltd.; Maher Terminals, Inc.; Marine Terminals Corp.; Maryland Port Administration; P&O Ports North America, Inc.; South Carolina State Ports Authority; Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc.; TraPac Terminals; Universal Maritime Service Corp.; and Virginia International Terminals.

*Synopsis:* The proposed agreement would authorize the parties to meet, discuss, and possibly agree on the costs of port security, including rates, charges, rules, regulations, practices, and terms and conditions related thereto.

By Order of the Federal Maritime Commission.

Dated: May 2, 2003.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03–11363 Filed 5–6–03; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

*License number:* 14202N.
*Name:* Air Cargo Global Corp.
*Address:* 170 Neptune Avenue, Brooklyn, NY 11235.
*Date revoked:* April 19, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 17570N.
*Name:* Alpa International Group, Inc.
*Address:* 2105 NW 79th Avenue, Miami, FL 33122.
*Date revoked:* March 27, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 3717F.
*Name:* Altair Freighting (International) Inc.
*Address:* 20 Parkside Way, Robinsville, NJ 08691.
*Date revoked:* December 6, 2002.
*Reason:* Failed to maintain a valid bond.

*License number:* 17180F.
*Name:* American Logistic Co., Inc.
*Address:* 10840 Warner Avenue, Suite 205, Fountain Valley, CA 92708.
*Date revoked:* April 4, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 2557F.
*Name:* Armesko International Shipping Corp.
*Address:* 9341 SW 53rd Street, Miami, FL 33165.
*Date revoked:* March 21, 2003.
*Reason:* Surrendered license voluntarily.

*License number:* 1803F.
*Name:* Blue Sky Blue Sea, Inc. dba American Export Lines dba International Shipping Company.
*Address:* 12919 S. Figueroa Street, Los Angeles, CA 90061.
*Date revoked:* March 29, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 16338N.
*Name:* Brisk International Express, Inc.
*Address:* 8542 NW 66th Street, Miami, FL 33166.
*Date revoked:* April 13, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 14639N.
*Name:* Brokers & Cargo Int'l Business, Corp.
*Address:* 8427 NW 68th Street, Miami, FL 33166.
*Date revoked:* September 19, 2001.
*Reason:* Failed to maintain a valid bond.

*License number:* 11725N.
*Name:* City Network, Inc.
*Address:* 9420 W. Foster Ave., Suite 107, Chicago, IL 60656.
*Date revoked:* April 10, 2003.
*Reason:* Surrendered license voluntarily.

*License number:* 4622F.
*Name:* E & M International L.L.C. dba Worldwide Transport.
*Address:* 5304 W 135th Street, Hawthorne, CA 90250.
*Date revoked:* March 23, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 10355N.
*Name:* Finlay's Import-Export, Inc. dba Finlay's Ship To Jamaica.
*Address:* 8700 NW 7th Avenue, Miami, FL 33150.
*Date revoked:* April 3, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 12877N.
*Name:* International Globtrade, Inc. dba Legacy Shipping Line.
*Address:* 3906 N. Broadway Street, Chicago, IL 60613.
*Date revoked:* April 19, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 17938N.
*Name:* International Transportation Group, Inc.
*Address:* 372 Doughty Blvd., 2nd Floor, Inwood, NY 11096.
*Date revoked:* April 18, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 15920N.
*Name:* K-Trans America, Inc. dba A-Trans.
*Address:* 20435 S. Western Avenue, Unit A, Torrance, CA 90501.
*Date revoked:* April 9, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 16627N.
*Name:* L.G. Diamond International Shipping, Inc. dba Diamond International Shipping.
*Address:* 11340 Muller Street, Downey, CA 90241.
*Date revoked:* April 3, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 16896N.
*Name:* Logistics Advantage, Inc.
*Address:* 1805 South Elm Street, Alhambra, CA 91803.
*Date revoked:* April 20, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 2663NF.
*Name:* Maarten Intermodal Expeditors, Inc.
*Address:* 20439 First Avenue, Middleburg Heights, OH 44130.
*Date revoked:* April 4, 2003.
*Reason:* Failed to maintain valid bonds.

*License number:* 17154N.
*Name:* Mabuhay Cargo Express, Inc.
*Address:* 1949 W. Washington Blvd., Los Angeles, CA 90018.
*Date revoked:* April 11, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 3542F.
*Name:* Margaret V. Munoz dba Overseas Transport Company.
*Address:* 201 W. Springfield Avenue, Suite 905, Champaign, IL 61820.
*Date revoked:* March 23, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 17519N.
*Name:* Masters International Logistics, Inc.
*Address:* 440 Route 17 North, Suite 10B, Hasbrouck Heights, NJ 07604.
*Date revoked:* April 3, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 12302N.
*Name:* Ocean Intermodal, Inc.
*Address:* 7971 NW 67th Street, Miami, FL 33166.
*Date revoked:* April 3, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 16887N.
*Name:* Promax Automotive, Inc.
*Address :* 6722 Orangethorpe Avenue, Suite 175, Buena Park, CA 90622.
*Date revoked:* April 9, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 14713N.
*Name:* Seagull Container Line Inc.
*Address:* 167–43 Porter Road, Jamaica, NY 11434.
*Date revoked:* April 10, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 3610NF.
*Name:* Sorenna.
*Address:* 3051 E. Maria Street, Rancho Dominguez, CA 90221.
*Date revoked:* April 3, 2003.
*Reason:* Failed to maintain valid bonds.

*License number:* 2189F.
*Name:* Stavers Corporation.
*Address:* 165 Truman Terrace, Paramus, NJ 07652.
*Date revoked:* April 13, 2003.
*Reason:* Failed to maintain a valid bond.

*License number:* 4506F.
*Name:* Thomas G. Madden, Inc.
*Address:* 100 Inwood Court, Greer, SC 29650.
*Date revoked:* November 26, 2002.
*Reason:* Surrendered license voluntarily.

*License number:* 4100NF.
*Name:* Trans World Shipments, Inc. dba TWS, Inc.
*Address:* 5701 NW 7th Street, Suite 100, Miami, FL 33126.
*Date revoked:* April 4, 2003.
*Reason:* Failed to maintain valid bonds.

*License number:* 18077F.
*Name:* WTS Agencies, Inc.
*Address:* 1087 Downtowner Blvd., Suite 100, Mobile, AL 36609.
*Date revoked:* April 11, 2003.
*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**
*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 03–11364 Filed 5–6–03; 8:45 am]
BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

| License No. | Name/address | Date reissued |
|---|---|---|
| 2651F | Pioneer International Forwarding Co., Inc., No. 687 Commercial Street, 2nd Floor, San Francisco, CA 94111. | March 1, 2003. |
| 15605N | Solid Trans Inc., 8625 Aviation Blvd., Inglewood, CA 90301 | June 30, 2002. |
| 16230N | A-P-A World Transport Corp., 545 Dowd Avenue, Elizabeth, NJ 07201 | February 18, 2003. |
| 4175NF | Silken Fortress Corporation, dba Transcargo International, 5858 S. Holmes Avenue, Los Angeles, CA 90001. | December 8, 2002. |
| 15682N | S/J Americas Service, LLC, dba Smith & Johnson, 12707 Woodforest Blvd., Houston, TX 77015. | December 5, 2001. |
| 14713N | Seagull Container Line Inc., 167–43 Porter Road, Jamaica, NY 11434 | April 10, 2003. |

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 03–11365 Filed 5–6–03; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 2003.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

*1. Citizens National Banc Corporation,* Meridian, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens National Bank of Meridian, Meridian, Mississippi.

**B. Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

*1. Central Pacific Financial Corp.,* Honolulu, Hawaii; to acquire at least 50.1 percent and up to 100 percent of CB Bancshares, Inc., and thereby indirectly acquire City Bank, both of Honolulu, Hawaii.

In connection with this application, Central Pacific Financial Corp., Honolulu, Hawaii, also has applied to engage indirectly in data processing activities pursuant to section 225.28(b)(14)(i), through the acquisition of Datatronix Financial Services, Inc., Honolulu, Hawaii.

Board of Governors of the Federal Reserve System, May 1, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–11254 Filed 5–6–03; 8:45 am]

**BILLING CODE 6210–01–S**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0279]**

### Office of Inspector General; Online Survey of Vendors Using FedBizOpps

**AGENCY:** Office of Inspector General, (GSA).

**ACTION:** Notice of a new one-time collection.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA), Office of Inspector General (IG) has submitted to the Office of Management and Budget (OMB) a request for an emergency approval of a new collection regarding the OIG's online vendor survey of FedBizOpps vendors. The survey is being submitted only to vendors who have indicated their desire to do business with the Federal Government by registering to receive email notifications of Federal procurement opportunities from FedBizOpps. Audit results will be reported to GSA.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The purpose of the Office of Inspector General's online vendor survey of FedBizOpps vendors is to identify ways of improving the system's functionality, expanding business opportunities, streamlining solicitation posting processes, and to measure vendor ease of use with the features offered by FedBizOpps. Collecting this survey information is required to determine the utility and ease of use of the FedBizOpps portal for posting business opportunities on the *http://www.fedbizopps.gov* Web site, which replaced the Commerce Business Daily as the Governmentwide point of entry for publicly posting solicitations.

FedBizOpps is to serve as the one-stop gateway to Federal open market procurement solicitations. Agency buyers post business opportunities directly to FedBizOpps and vendors search the Governmentwide postings for possible business opportunities looking at a printed list. Using FedBizOpps, vendors should be able to identify locations of Government solicitations electronically as soon as requests for contract proposals are released to the public. The most reliable source for determining FedBizOpps' effectiveness is the vendor community. This survey is essential to gather system functionality data that is required to evaluate the system's effectiveness.

**B. Annual Reporting Burden**

*Respondents:* 46,500.
*Responses Per Respondent:* 1.
*Total Responses:* 46,500.
*Hours Per Response:* 4.9 minutes.
*Total Burden Hours:* 3,978.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory and Federal Assistance

Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite 3090–0279, Online Survey of Vendors Using FedBizOpps Survey in all correspondence.

Dated: April 17, 2003.

**Michael W. Carleton,**

*Chief Information Officer (I).*

[FR Doc. 03–11218 Filed 5–6–03; 8:45 am]

**BILLING CODE 6820–24–P**

## GENERAL SERVICES ADMINISTRATION

### Interagency Committee for Medical Record (ICMR); Automation of Medical Standard Form 603A

**AGENCY:** Office of Communications, GSA.

**ACTION:** Guideline on automating medical standard forms.

**SUMMARY:** With GSA's approval, the Interagency Committee of Medical Records (ICMR) eliminated the requirement that every electronic version of a medical Standard/Optional form be reviewed and granted an exception. The following fields must appear on the electronic version of the following form:

**Background**

The Interagency Committee on Medical Records (ICMR) is aware of numerous activities using computer-generated medical forms, many of which are not mirror-like images of the genuine paper Standard/Optional Form. With GSA's approval the ICMR eliminated the requirement that every electronic version of a medical Standard/Optional form be reviewed and granted an exception. The committee proposes to set required fields standards and that activities developing computer-generated versions adhere to the required fields but not necessarily to the image. The ICMR plans to review medical Standard/Optional forms which are commonly used and/or commonly computer-generated. We will identify those fields which are required, those (if any) which are optional, and the required format (if necessary). Activities may not add or delete data elements that would change the meaning of the form. This would require written approval from the ICMR. Using the process by which overprints are approved for paper Standard/Optional forms, activities may add other data entry elements to those required by the committee. With this decision, activities at the local or headquarters level should be able to develop electronic versions which meet the committee's requirements. This guideline controls the ''image'' or required fields but not the actual entered into the field.

ELECTRONIC ELEMENTS FOR SF 603A

| Item | Placement* |
|---|---|
| Dental—Continuation | Top of form |
| Standard Form 603A (Rev. 11/2002) (Form ID) | Bottom right corner of form. |
| Data Entry Fields: | |
| Section III. Attendance Record (text) | Above items listed below. |
| 15. Restorations and Treatments (Completed during service) (text) | Above Items listed below. |
| (Graphic of full set of teeth with each tooth numbered. Numbers will range from 1 to 32) | |
| Remarks | |
| 16. Subsequent Diseases and Abnormalities | Above items listed below. |
| (Graphic of full set of teeth with each tooth numbered. Numbers will range from 1 to 32) | |
| Remarks | |
| 17. Services Rendered (text) | Above Items listed below. |
| Date (Allow for at least 21 entries) | |
| Diagnosis-Treatment (Allow for at least 21 entries) | |
| Class (Allow for at least 21 entries) | |
| Operator and Dental Facility (Allow for at least 21 entries) | |
| Initials (Allow for at least 21 entries) | |
| Relationship to Sponsor | |
| Sponsor's Name—Last | |
| Sponsor's Name—First | |
| Sponsor's Name—Middle Initial | |
| Sponsor's Identification Number (Social Security Number or Other) | |
| Department/Service | |
| Hospital or Medical Facility | |
| Records Maintained At | |
| Register Number | |
| Ward Number | |
| If collected data covers more than one page, the following elements apply: | |
| Last Name | Top of every even page. |
| First Name | Do. |
| Middle Initial | Do. |
| ID Number | Do. |

*If no specific placement, data element may be in any order.

**FOR FURTHER INFORMATION CONTACT:** CDR Katherine Ciacco Palatianos, Indian Health Service, Department of Health and Human Services, Rockville, MD 20857 or e-mail at *kciacco@hqe.ihs.gov.*

Dated: April 24, 2003.

**Katherine Ciacco Palatianos,**

*Chairperson, Interagency Committee on Medical Records.*

[FR Doc. 03–11217 Filed 5–6–03; 8:45 am]

**BILLING CODE 6820–34–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security (SSS).

*Time and Date:* 9 a.m. to 5 p.m., May 20, 2003. 9 a.m. to 5 p.m., May 21, 2003. 8:30 a.m. to 3 p.m., May 22, 2003.

*Place:* Crowne Plaza Hotel, 1489 Jefferson Davis Highway, Arlington, VA 22202, (703) 416–1600.

*Status:* Open.

*Purpose:* On May 20th the National Committee on Vital and Health Statistics (NCVHS) through the Subcommittee on Standards and Security (SSS) will address two topics. The first topic involves HIPAA contingency planning in which the subcommittee will hear testimony from the Workshop for Electronic Data Interchange (WEDI), healthcare payers, and healthcare providers. The second topic will be a roundtable discussion with members of the Consolidated Health Informatics (CHI) initiative, one of the 24 projects within the federal E-Government Strategy. The roundtable discussions will include the CHI healthcare industry outreach plan, the CHI target portfolio of clinical vocabulary domains, and the clinical messaging/vocabulary standards adopted and under consideration by CHI.

On May 21st–22nd NCVHS/SSS will address two issues. The first issue is the next phase of activities on Patient Medical Record Information (PMRI), which will recommend PMRI terminology standards to the Secretary of the Department of Health and Human Services. The first two steps of the process were to hear testimony from terminology experts for defining the scope and criteria when selecting standard PMRI terminologies and to obtain information from PMRI terminology developers. The third step, which is planned for this day-and-a-half portion of this meeting, is to hear the experiences of the users of these terminologies. For this step, the Subcommittee will hear testimony from software application vendors, terminology server vendors and healthcare end-users of the PMRI terminologies that were identified in the initial steps of the process. On the afternoon of May 22nd, NCVHS/SSS will address the final topic, which is an update about the ICD–10 cost/benefit analysis project being conducted by the Subcommittee.

*Contact Person for More Information:* Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Karen Trudel, Senior Technical Advisor, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: (410) 786–9937; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: April 29, 2003.

**James Scanlon,**

*Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 03–11224 Filed 5–6–03; 8:45 am]

**BILLING CODE 4151–05–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 03068]**

### Primate Model for Studying the Pathogenesis of Measles Infections and for Development of Improved Measles Vaccines; Notice of Availability of Funds

Application Deadline: June 23, 2003.

#### A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the sections 301 and 317(k)(1) of the Public Health Service Act, as amended, [42 U.S.C. 241 and 247b(k)(1)]. The Catalog of Federal Domestic Assistance number is 93.283.

#### B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for a Primate Model for Studying the Pathogenesis of Measles Infections and for Development of Improved Measles Vaccines. This program addresses the ''Healthy People 2010'' focus area of Immunization and Infectious Diseases.

The purpose of the program is to define the genetic and immunologic basis for the pathogenesis of measles virus and to use this information to develop improved vaccines for worldwide measles control efforts.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Infectious Diseases (NCID): Protect Americans from infectious diseases.

Any research project involving the construction and/or handling of recombinant deoxyribonucleic acid (DNA) molecules or organisms or viruses containing recombinant DNA molecules will be subject to review and approval by the CDC Institutional Biosafety Committee using the National Institutes of Health (NIH) Guidelines: *http://www4.od.nih.gov/oba/rac/guidelines/guidelines.html*

#### C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, this includes:

- Universities
- Colleges
- Technical schools
- Research Institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian Tribes
- Indian tribal organizations
- State and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

**Note:** Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

#### D. Funding

*Availability of Funds*

Approximately $200,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about September 15, 2003, and will be made for a 12-month budget period within a project period of up to 3 years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

*Recipient Financial Participation*

Matching funds are not required for this program.

*Funding Preferences*

Applications for new studies are encouraged, however, funding preference may be given to the competing continuation application over applications for programs not already receiving support under the existing program. The current awardee has implemented vaccine research that requires continued support to become fully developed and to realize the benefits of an improved vaccine.

**E. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

*1. Recipient Activities*

(a) Develop a study design to accomplish the following research goals:

(1) Use the rhesus macaque as a primate model for measles infections. These studies which produce disease in rhesus that closely resembles measles in humans will describe the pathogenesis of measles in the primate model.

(2) Characterize the immune response to natural measles disease and measles vaccination. Studies should attempt to measure differences between the immune response in animals receiving measles vaccines to those experiencing infection with a virulent strain. Efforts should be aimed at providing a complete description of the humoral, and especially, the cellular immune responses. These studies should include and broaden our understanding of cell mediated immunity by mapping CD4 and CD8 T-cell reactive epitopes on measles antigens and by measuring the cytokine/chemokine responses following infection or vaccination.

(3) Develop improved measles vaccines. Research efforts should be directed at developing, testing and optimizing novel vaccine formulations that could be used to stimulate an immune response in the presence of maternal antibody. Such vaccines would be used to protect newborn humans from measles infection or disease during their first year of life. In addition, subunit or DNA vaccines that could be used to stimulate or boost immunity in immunocompromized individuals should also be considered. Using recombinant measles viruses as a vector to present other antigens should also be considered.

(4) Conduct studies to evaluate the safety and efficacy of standard measles vaccines given by alternate routes. In particular, studies to evaluate the safety and efficacy of measles vaccines given as aerosols or dry powders via the intranasal route should be conducted in normal and immunosuppressed animals. Evaluation of immune response to individual measles virus antigens.

(5) Conduct studies to determine the genetic basis for virulence of measles virus in the rhesus macaque. Studies should include experimental infections with recombinant measles viruses that have defined genetic characteristics. Another important goal will be the maintenance and genetic characterization of viral stocks which can reliably produce disease in rhesus by the intranasal route. Conduct detailed analysis of these stocks to help understand the genetic basis for the pathogenesis of measles virus.

(b) Perform all inoculations of research animals. Maintain records of clinical observations and obtain samples for laboratory analysis.

(c) Perform specialized tests on specimens obtained from study animals and coordinate shipment of specimens to CDC for additional testing.

(d) Provide routine veterinary care, housing and other support for rhesus macaques to be used in experiments. Comply fully with PHS policies regarding research on animal subjects.

(e) Maintain sufficient numbers of rhesus macaques so that experiments can be completed in a timely manner.

(f) Develop experimental measles vaccines and evaluate them in the animal model.

(g) Analyze data and manuscripts describing results of research investigations.

*2. CDC Activities*

(a) Collaborate on the design and conduct of the research.

(b) Collaborate in the development of various preparations of measles virus antigens, recombinant viruses, rescued viruses or complementary DNA (cDNA) clones for use as experimental vaccines.

(c) Provide Direct Assistance for specialty reagents, such as monoclonal and polyclonal antiserum, and PCR primers as needed.

(d) Conduct specialized analysis of samples obtained from test animals and assist with genetic characterization of viruses used in the study.

(e) Collaborate in data analysis, manuscript preparation and presentation.

**F. Content**

*Letter of Intent (LOI)*

An LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two pages, single-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter of intent will be used to enable CDC to determine the level of interest in the announcement and should include the following information, a brief description of the proposed study, the business address of the organization, and the name and phone number of the Principal Investigator.

*Applications*

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than ten pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of Background and Need, Capacity, Objectives and Technical Approach, Measures of Effectiveness, Budget, and Animal Subjects.

**G. Submission and Deadline**

*Letter of Intent (LOI) Submission*

On or before May 22, 2003, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

*Application Forms*

Submit the signed original and two copies of PHS 398 (OMB Number 0920–0001). Adhere to the instructions on the Errata Instruction Sheet (posted on the CDC website) for PHS 398. Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

*Submission Date, Time, and Address*

The application must be received by 4 p.m. Eastern Time June 23, 2003. Submit the application to: Technical Information Management—PA03068, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Applications may not be submitted electronically.

*CDC Acknowledgment of Application Receipt*

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your application.

*Deadline*

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2)significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

**H. Evaluation Criteria**

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the [grant or cooperative agreement]. Measures of Effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Capacity (45 total points). (a) Extent to which applicant demonstrates experience with viral pathogenesis and immunology in rhesus macaques or other primate system. Extent to which the applicant can demonstrate previous or ongoing experience with measles infections of primates. Extent to which the applicant can produce a measles infection that is similar to measles infections in humans in rhesus macaques following intranasal inoculation. (30 points)

(b) Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed in this cooperative agreement as evidenced by curriculum vitae, publications, etc. Extent to which the applicant demonstrates experience with virology, particularly the virology of measles virus. (10 points)

(c) Extent to which applicant describes adequate resources and facilities for conducting the project. Extent to which facilities for the safe handling of infectious agents are available. (5 points)

2. Objectives and Technical Approach (40 total points). (a) Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed studies. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. (20 points)

(b) Extent to which applicant provides a detailed plan for evaluating study results and for evaluating progress towards achieving project objectives. (15 points)

(c) Extent to which applicant describes objectives of the proposed project which are consistent with the purpose and program requirements of this cooperative agreement and which are measurable and time-phased. (5 points)

3. Background and Need (10 points). Extent to which applicant demonstrates a clear understanding of the purpose and objectives of this proposed cooperative agreement.

4. Measures of Effectiveness (5 points). Does the applicant provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant? Are the measures objective/quantitative and do they adequately measure the intended outcome?

5. Budget (Not Scored). Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds.

6. Animal Subjects (Not Scored). Extent to which the application adequately addresses the requirements of Public Health Policy on Humane Care and Use of Laboratory Animals.

**I. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activity Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

*Additional Requirements*

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC website.

AR–3—Animal Subjects Requirements
AR–7—Executive Order 12372
AR–10—Smoke Free Work Place Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions
AR–15—Proof of Non-Profit Status
AR–22—Research Integrity

**J. Where To Obtain Additional Information**

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Jeff Napier, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2861, E-mail Address: *jkn7@cdc.gov.*

For program technical assistance, contact: Paul A. Rota, Ph.D., Supervisory Microbiologist, National Center for Infectious Diseases, Centers for Disease Control and Prevention, MS–C–22, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone: (404) 639–4181, E-mail: *Prota@cdc.gov.*

Dated: May 1, 2003.

**Edward Schultz,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–11261 Filed 5–6–03; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[Program Announcement 03057]**

## Cooperative Agreement for a National Poison Prevention and Control Program; Notice of Availability of Funds

### A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a), 317(k)(2), 391, 392, and 394A [42 U.S.C. 241(a), 247b(k)(2), 280b, 280b-1, 280b-3] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.136.

### B. Purpose

The Centers for Disease Control and Prevention (CDC) and Health Resources Services Administration (HRSA) announce the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for a National Poison Prevention and Control Program. This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

The purpose of the program is to support an integrated system of poison prevention and control services including the following: Completing implementation of and maintaining the nationwide toll-free number for poison control services; developing, implementing, and evaluating prevention and public awareness activities associated with the toll-free number; and sustaining improvements to the national Toxic Exposure Surveillance System (TESS).

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the NCIPC: (1) Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence; (2) monitor and detect fatal and non-fatal injuries; and (3) conduct a targeted program of research to reduce injury-related death and disability.

### C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations, faith-based and community-based organizations, and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and Federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

**Note:** Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

### D. Funding

*Availability of Funds*

Up to $3,900,000 of FY 2003 funds are available to fund one award. It is expected that the award will begin on or about September 14, 2003, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

*Recipient Financial Participation*

Matching funds are not required for this program.

### E. Program Requirements

In conducting the activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities and CDC, in consultation with HRSA, will be responsible for the activities in 2. CDC Activities.

1. Recipient Activities

(a) Develop a plan to improve the current national toxicosurveillance system, with a focus on improvement of data collection and coding at a select sample of poison control centers.

(b) Implement and maintain the nationwide toll-free telephone number for poison control services.

(c) Develop and implement a national public service media campaign to familiarize health care professionals, public health professionals, and the public with poison control services. Establish a media campaign stakeholder committee, comprised of poison control center health educators, state health department injury prevention professionals, and representatives from relevant national organizations, to guide this effort.

(d) Promote broad use of the toll-free number by poison control centers, professionals, and the public by using materials developed by the American Association of Poison Control Centers (AAPCC) in 2002.

(e) Conduct an independent evaluation of materials developed in 2002, such as English- or Spanish-language promotional brochures or preschool education materials. Use formative research methods to test effectiveness in target audiences

(f) Respond to the request for interim reports to assure progress on the objectives of the cooperative agreement is being made; and meet, semiannually, with CDC and HRSA staff to identify and address problems.

2. CDC Activities

(a) Provide coordination between the grantee and HRSA, on all aspects of recipient activities.

(b) Collaborate in the evaluation of the improvements of data collection at a sample of poison control centers.

(c) Evaluate coding at a select sample of poison control centers.

(d) Provide technical assistance for the effective planning and management of the development and implementation of the public service media campaign.

(e) Serve, with HRSA staff, as ex-officio members of the media campaign stakeholder committee.

### F. Content

*Applications*

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in developing your program plan. The narrative should be no more than 30 double-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of:

1. *Abstract:* A one page abstract and summary of the proposed effort.

2. *Background and Need:* Application should describe the background and need for an integrated program of poison prevention and control services including the following: Maintaining the nationwide toll-free number for

poison control services; developing, implementing, and evaluating prevention and public awareness activities associated with the toll-free number; and sustaining improvements to the national Toxic Exposure Surveillance System (TESS).

3. *Methods:* Describe activities required to implement an integrated system of poison prevention and control services, as mentioned in the purpose section of this announcement. Provide (a) goals and objectives for implementation, and (b) a two-year timeline for implementation of activities that is logically sequenced. Describe the coordination of the poison control centers and other organizations that will participate and how this will occur. Include letters of support from all involved individuals and organizations.

Describe how you have addressed the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(b) The proposed justification when representation is limited or absent.

(c) A statement as to whether the design of the study is adequate to measure differences when warranted.

(d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. *Objectives:* Describe long- and short-term objectives that are specific, measurable, attainable, and realistic. Process and outcome objectives should be designed to accomplish all activities of the program during the project period.

5. *Evaluation:* Design an evaluation to document program process and effectiveness in achieving objectives to deliver poison prevention and control services. Document staff availability, expertise, and capacity to perform this evaluation.

6. *Staff and Resources:* Describe the responsibilities of the program coordinator and each of the other staff members responsible for carrying out the program, including experience, professional education, and time devoted to the program. A curriculum vita should be included for each critical staff member.

7. *Budget:* Include a detailed budget with accompanying narrative justifying all individual budget items that make up the total amount of funds requested. The budget should be consistent with the stated goals and objectives.

8. *Performance Goals:* Describe measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome.

**G. Submission and Deadline**

*Application Forms*

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

*Submission Date, Time and Address:*

The application must be received by 4 p.m. Eastern Time. June 23, 2003. Submit the application to: Technical Information Management—PA#03057, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

*CDC Acknowledgment of Application Receipt*

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

*Deadline*

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

**H. Evaluation Criteria**

*Application*

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Background and Need (25 percent). The extent to which the applicant presents an understanding of the need for a national poison prevention and control program and demonstrates experience in this area, especially the ability to work with poison control centers and their key issues, and describes the likely impact of their activities on this problem.

2. Staff and Resources (25 percent). The extent to which the applicant can provide adequate facilities, staff and/or collaborators, including a full-time coordinator and resources to accomplish the proposed goals and objectives during the project period. The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, previous experience, and capacity to perform the undertaking successfully.

3. Methods (20 percent). The extent to which the applicant provides a detailed description of all proposed activities and collaboration needed to achieve each objective and the overall program goal(s). The extent to which the applicant provides a reasonable logically sequenced and complete schedule for implementing all activities. The extent to which position descriptions, lines of command, and collaborations are appropriate to accomplishing the program goal(s) and objectives.

The extent that the application adequately addresses the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(b) The proposed justification when representation is limited or absent.

(c) A statement as to whether the design of the study is adequate to measure differences when warranted.

(d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Objectives (10 percent). The extent to which the applicant describes long and short term objectives that are specific, measurable, attainable, and realistic. The extent to which objectives are time-framed process and outcome objectives designed to accomplish all activities of the program.

5. Evaluation (10 percent). The extent to which the proposed evaluation plan is detailed and capable of documenting program process and outcome measures. The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, and capacity to perform the evaluation.

6. Performance Goals (10 percent). The extent to which the applicant provides measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome.

7. Budget and Justification (Not Scored). The extent to which the applicant provides a detailed budget and narrative justification consistent with the stated objectives and planned program activities.

8. Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

**I. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Interim progress report, by April 15th. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

*Additional Requirements*

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

AR–7—Executive Order 12372 Review
AR–8—Public Health System Reporting Requirements
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions
AR–13—Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–14—Accounting System Requirements
AR–15—Proof of Non-Profit Status

**J. Where To Obtain Additional Information**

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Nancy Pillar, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2721, E-mail address: *nfp6@cdc.gov*.

For program technical assistance, contact: Stacy L. Harper, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway NE., Mailstop F41, Atlanta, GA 30341–3724, Telephone: 770–488–4031, E-mail address: *SLHarper@cdc.gov*.

Dated: May 1, 2003.

**Edward Schultz,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 03–11262 Filed 5–6–03; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02E–0064]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; TRACLEER

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for TRACLEER and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

**FOR FURTHER INFORMATION CONTACT:** Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical

investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TRACLEER (bosentan). TRACLEER is indicated for the treatment of pulmonary arterial hypertension. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TRACLEER (U.S. Patent No. 5,292,740) from Hoffman-La Roche, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 26, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TRACLEER represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TRACLEER is 2,176 days. Of this time, 1,807 days occurred during the testing phase of the regulatory review period, while 369 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: December 8, 1995. The applicant claims December 9, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 8, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: November 17, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for TRACLEER (NDA 21–290) was initially submitted on November 17, 2000.

3. *The date the application was approved*: November 20, 2001. FDA has verified the applicant's claim that NDA 21–290 was approved on November 20, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,259 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written comments and ask for a redetermination by July 9, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 3, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2003.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 03–11215 Filed 5–6–03; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 03D–0112]**

### Draft ''Guidance for Industry: Independent Consultants for Biotechnology Clinical Trial Protocols;'' Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Independent Consultants for Biotechnology Clinical Trial Protocols'' dated May 2003. This draft guidance document is intended to explain when and how sponsors of clinical trials for certain products can request that FDA engage an independent consultant to participate in the review of protocols for clinical studies intended to serve as the primary basis of claims of efficacy.

**DATES:** Submit written or electronic comments on the draft guidance to ensure their adequate consideration in preparation of the final document by August 5, 2003. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448; or the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210; or John Jenkins, Center for Drug Evaluation and Research (HFD–020), 1451 Rockville Pike, Rockville, MD 20852–1448, 301–594–5421.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Independent Consultants for Biotechnology Clinical Trial Protocols''

dated May 2003. On June 12, 2002, the President signed the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, which includes the Prescription Drug User Fee Amendments of 2002 (PDUFA III). Secretary Thompson's letter to Congress concerning PDUFA III included an addendum containing the performance goals and programs intended to facilitate the development and review of human drugs to which FDA had committed. One commitment was the establishment of a program that allows the sponsor of clinical trials for certain products to request that FDA engage an independent consultant to participate in the review of protocols for clinical studies that are intended to serve as the primary basis of claims of efficacy. This draft guidance document is intended to explain when and how a sponsor may take advantage of this program.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

### II. Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this draft guidance document. Submit written or electronic comments to ensure adequate consideration in preparation of the final document. Two copies of mailed comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

### III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: April 23, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–11214 Filed 5–6–03; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. 99D–5453]**

## Guidance for Industry on Photosafety Testing; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Photosafety Testing.'' This guidance provides recommendations on when to test for photoirritation and assess the potential of drug products to enhance ultraviolet (UV)-associated skin carcinogenesis.

**DATES:** Submit written comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Abigail C. Jacobs, Center for Drug Evaluation and Research (HFD–540), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2020.

**SUPPLEMENTARY INFORMATION:**

### I. Background

FDA is announcing the availability of a guidance for industry entitled ''Photosafety Testing.'' This guidance provides recommendations on when to test for photoirritation and assess the potential of drug products to enhance UV-associated skin carcinogenesis.

In the **Federal Register** of January 10, 2000 (65 FR 1399), FDA published a notice making available a draft guidance entitled ''Photosafety Testing.'' The notice gave interested persons an opportunity to submit comments. As a result of the comments, certain sections of this guidance were reworded to improve clarity. This guidance further emphasizes that a flexible approach can be used to address adverse photoeffects and that a specific assay is not required. Moreover, it encourages the development of methods that can be efficiently used to evaluate human safety. This guidance describes a consistent, science-based approach for testing of topically and systemically administered drug products. It also describes basic concepts of photobiology and phototesting.

This guidance is being issued consistent with FDA's good guidance practice regulation (21 CFR 10.115). The guidance represents the agency's current thinking on nonclinical photosafety testing. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

### II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two paper copies of mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

### III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: April 30, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–11216 Filed 5–6–03; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given that the following committee will convene its forty-fourth meeting.

*Name:* National Advisory Committee on Rural Health and Human Services.

*Dates and Times:* June 8, 2003, 1 p.m.–4:30 p.m.; June 9, 2003, 8 a.m.–5 p.m.; June 10, 2003, 8 a.m.–10:30 a.m.

*Places:* The Westin Riverwalk, 420 Market Street, San Antonio, TX 78205, and Holiday Inn, 920 E. Main, Uvalde, TX 78801.

*Status:* The meeting will be open to the public.

*Purpose:* The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health and human services in rural areas.

*Agenda:* Sunday, June 8, at 1 p.m. at The Westin Riverwalk the Chairperson, the Honorable David Beasley, will open the meeting and welcome the Committee. The first session will open with a discussion of the Committee business and a review of the 2004 workplan by The Honorable David Beasley and the Office of Rural Health Policy (ORHP) Acting Deputy Director, Mr. Tom Morris. This will be followed by a dialogue about the broad health and human services issues in Texas. The Committee will break into workgroups for an in-depth discussion on the three topics for the 2004 workplan: the elderly, oral health, and the integration of primary care and behavioral health.

Monday, June 9, the Committee will depart from the Holiday Inn at 9 a.m. for a site visit of the Uvalde Health Center's Oral Health Unit. Transportation will not be provided to the public. The next session will begin at 10:30 a.m. at the Holiday Inn and will consist of presentations on aging issues and the integration of behavioral health and primary health care. Afterward, the Committee will again break into three subgroups.

The final session will be convened Tuesday, June 10, at 8 a.m at the Holiday Inn. The Committee will review the site visit and draft an outline for the 2004 report. The meeting will conclude with a discussion of the upcoming September meeting, and will adjourn at 10:30 a.m.

*For Further Information Contact:* Anyone requiring information regarding the Committee should contact Tom Morris, MPA, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray-Gibson, Office of Rural Health Policy (ORHP), telephone (301) 443–0835. The Committee meeting agenda will be posted on ORHP's Web site *http://www.ruralhealth.hrsa.gov*.

Dated: May 1, 2003.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 03–11286 Filed 5–6–03; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the inaugural meeting of the Secretary's Advisory Committee on Genetics, Health and Society (SACGHS).

The meeting will be held from 9 a.m. to 6 p.m. on June 11, 2003 and 8:30 a.m. to 5 p.m. on June 12, 2003 at the Wyndham Hotel, 1400 M Street, NW., Washington, DC. The meeting will be open to the public with attendance limited to space available.

The first day will be devoted to presentations on and discussion of the status and future directions of genetic technologies, their potential applications, and the issues surrounding their use. The second day will involve deliberations aimed at formulating the SACGHS issues agenda. Time will be provided each day for public comment.

Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic technologies and, as warranted, to provide advice on these issues.

The draft meeting agenda and other information about SACGHS will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm.* Individuals who wish to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov.* The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 92.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program or Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: April 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11344 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Cooperative Planning Grant for Cancer Disparties Research Partnership Program.

*Date:* May 27, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute, Executive Plaza North, 6130 Executive Boulevard, Conference Rooms E & F, Rockville, MD 20852.

*Contact Person:* Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405. 301/496–7987.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11338 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Integrating Aging and Cancer.

*Date:* June 12–13, 2003.

*Time:* 7:30 a.m. to 8:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA 22209.

*Contact Person:* Gail J. Bryant, Medical Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8111, MSC 8328, Bethesda, MD 20852–8328. (301) 402–0801. 3gb30t@nih.gov.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.

Dated: April 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11339 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Colorectal Cancer Screening in Primary Care Practice.

*Date:* June 5, 2003.

*Time:* 11 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11350 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Role of Sleep and Sleep-Disordered Breathing in Metabolic Syndrome.

*Date:* June 24, 2003.

*Time:* 8 a.m. to 5p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

*Contact Person:* Arthur N. Freed, PhD, Review Branch, Room 7186, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892. (301) 435–0280.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 1,2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11336 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Survey of Physician Knowledge and Practice Patterns.

*Date:* May 27, 2003.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Anne P. Clark, PhD, Chief, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Rockledge II, Room 7214, 6701 Rockledge Drive, MSC 7924, Bethesda MD 20892–7924, 301/435–0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11346 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Vascular and Lung Development Grants.

*Date:* June 5–6, 2003.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Keith A Mintzer, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7186, MSC 7924, Bethesda, MD 20892, 301–435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11347 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of Loan Repayment Program Applications.

*Date:* May 29, 2003.

*Time:* 9 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 6000 Executive Boulevard, Willco Building, Rockville, MD 20892. (Telephone conference call.)

*Contact Person:* Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–443–9787. *etaylor@niaaa.nih.gov.*

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel RFA HD–03–004, Prenatal Alcohol Exposure Among High Risk Populations.

*Date:* July 1, 2003.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* DoubleTree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003. (301) 443–2926. *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11337 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Family Management of Childhood Diabetes.

*Date:* June 1–3, 2003.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (301) 435–6902. *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11340 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Comprehensive International Program of Research on AIDS (CIPRA)—Peru.

*Date:* May 27, 2003.

*Time:* 2 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant proposals.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Eleazar Cohen, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700 B Rockledge Drive, MSC 7616, Room 3112, Bethesda, MD 20892–7616, 301–435–3564, *ec17w@nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, In Vitro and Animal Models for Emerging Diseases and BioDefense, Parts E&F.

*Date:* May 30, 2003.

*Time:* 12:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 4200, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Anthony Macaluso, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2212, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–7465, *amacaluso@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, In Vitro and Animal Models for Emerging Diseases and Biodefense, Parts A&B.

*Date:* June 2–3, 2003.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Somerset Room, Chevy Chase, MD 20815.

*Contact Person:* Anthony Macaluso, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2212, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–7465, *amacaluso@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, In Vitro and Animal Models for Emerging Diseases and Biodefense, Part C.

*Date:* June 6, 2003.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Anthony Macaluso, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2212, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–7465, *amacaluso@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, In Vitro and Animal Models for Emerging Diseases and BioDefense, Part D.

*Date:* June 9, 2003.

*Time:* 12:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 1205, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Anthony Macaluso, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2212, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–7465, *amacaluso@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11342 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–55, To review RFA, Tobacco Control Intervention.

*Date:* June 11, 2003.

*Time:* 8 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Rebecca Roper, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., Bethesda, MD 20892, 301 451–5096.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–52, To review RFA, Research Curriculum Grants.

*Date:* August 19, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11343 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Review of Protective and Plastic Effects Proposals.

*Date:* June 5, 2003.

*Time:* 1 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11345 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study of Environmental Effects on Health Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* National Children's Study of Environmental Effects on Health Advisory Committee.

*Date:* June 5–6, 2003.

*Time:* June 5, 2003, 8 a.m. to 5:30 p.m.

*Agenda:* Members of the public that plan to attend should contact Circle Solutions at (703) 902–1339 or via e-mail *ncs@circlesolutions.com.* For agenda updates, please visit the NCS Web site *nationalchildrensstudy.gov.*

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Versaille I, Bethesda, MD 20814.

*Time:* June 5, 2003, 8 a.m. to 5:30 p.m.

*Agenda:* Discussions will include activities presented at the March 2003 mtg; priorization of pilot studies; development of hypothesis; and various issues which may include topics on racism, health disparity, and ethical issues affecting the conduct of the Study.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Versaille I, Bethesda, MD 20814.

*Contact Person:* Peter M. Scheidt, MD, Medical Officer, Division of Epidemiology, Statistics and Prevention Research, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5C01, Bethesda, MD 20892, (301) 451–6421, *ncs@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11348 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Egg to Embryo: Gene Regulatory Circuitry in Development.

*Date:* May 28, 2003.

*Time:* 9 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* American Inn of Bethesda, 8130 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 29, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11349 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* PubMed Central National Advisory Committee.

*Date:* June 25, 2003.

*Time:* 9 a.m. to 4 p.m.

*Agenda:* Review and Analysis of Systems.

*Place:* National Institutes of Health, Building 38, 2nd Floor Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* David J. Lipman, MD, Director, Natl. Ctr. for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.pubmedcentral.nih.gov/about/nac/html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 1, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11335 Filed 5–6–03; 8:45 am]

**BILLING CODE 4110–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Human Brain Project.

*Date:* May 29–30, 2003.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Peter Lyster, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892. (301) 435–1256. *lysterp@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Software Maintenance 02–141.

*Date:* June 9, 2003.

*Time:* 7:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* The Wyndham; City Center, 1143 New Hampshire Avenue and M Street, Washington, DC 20037.

*Contact Person:* George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892. 301–435–1220. *chackoge@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Gastrointestinal Hepatobiliary and Pancreatic Physiology and Pathobiology.

*Date:* June 9–10, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* Najma Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892. 301–435–2243. *begumn@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSSW 10B: Small Business: Cardiovascular Devices.

*Date:* June 9–10, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892. (301) 435–1174. *dhindsa@csr.nih.gov.*

*Name of Committee:* Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 7, Motor Function, Speech and Rehabilitation.

*Date:* June 9, 2003.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

*Contact Person:* Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892. (301) 435–1507. *niw@csr.nih.gov.*

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 3, IFCN 3 (01) Biological Rhythms and Sleep.

*Date:* June 9, 2003.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20817–7844. 301–435–1245. *richard.marcus@nih.gov.*

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 5.

*Date:* June 10–11, 2003.

*Time:* 8 a.m. to 10 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

*Contact Person:* John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. (301) 435–1250.

*Name of Committee:* Nutritional and Metabolic Sciences Integrated Review Group, Nutrition Study Section.

*Date:* June 10–11, 2003.

*Time:* 8:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel, 300 Canal St., New Orleans, LA 70130.

*Contact Person:* Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7804, Bethesda, MD 20892. (301) 435–1780.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Nursing Reserach: Child and Family.

*Date:* June 10–11, 2003.

*Time:* 8:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.

*Contact Person:* Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 3166 MSC 7770, Bethesda, MD 20892. 301–435–1017.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience

Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 6.

*Date:* June 10–11, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

*Contact Person:* Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892. (301) 435–1249.

*Name of Committee:* Nutritional and Metabolic Sciences Integrated Review Group, Metabolism Study Section.

*Date:* June 11–12, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree New Orleans, 300 Canal Street, New Orleans, LA 70130.

*Contact Person:* Ann A. Jenkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892. 301–435–4515. *jerkinsa@csr.nih.gov.*

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Visual Sciences B Study Section, Central Visual Processes.

*Date:* June 11–12, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Christine Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176 MSC 7844, Bethesda, MD 20892. (301) 435–1713. *melchioc@csr.nih.gov.*

*Name of Committee:* Oncological Sciences Integrated Review Group, Experimental Therapeutics Subcommittee 1.

*Date:* June 11–13, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA 22209.

*Contact Preson:* Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892. (301) 435–1718. *perkins@csr.nih.gov.*

*Name of Committee:* Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 1, Biobehavioral Regulation, Learning and Ethology.

*Date:* June 11–13, 2003.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

*Contact Person:* Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC, Bethesda, MD 20892. (301) 435–0692.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowship Review: Sensory and Motor Systems Physiology.

*Date:* June 11, 2003.

*Time:* 10:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

*Contact Person:* John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. (301) 435–1250.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Computational Approaches to Biology.

*Date:* June 12–13, 2003.

*Time:* 7:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892. 301–435–1220. *chackoge@csr.nih.gov.*

*Name of Committee:* Endocrinology and Reproductive Sciences Integrated Review Group, Human Embryology and Development Subcommittee 1.

*Date:* June 12–13, 2003.

*Time:* 8 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892. (301) 435–1046.

*Name of Committee:* Hematology Integrated Review Group, Hematopoiesis Study Section.

*Date:* June 12–13, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892. (301) 435–1195.

*Name of Committee:* Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Nursing Research Study Section, Nursing Science: Adults and Older Adults.

*Date:* June 12–13, 2003.

*Time:* 8 a.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.

*Contact Person:* Gertrude McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892. (301) 435–1784. *mcfarlag@csr.nih.gov.*

*Name of Committee:* Cardiovascular Sciences Integrated Review Group, Pharmacology Study Section.

*Date:* June 12–13, 2003.

*Time:* 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

*Contact Person:* Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892. 301–435–4522. *gibsonj@csr.nih.gov.*

*Name of Committee:* Cell Development and Function Integrated Review Group, Cell Development and Function 3.

*Date:* June 12–13, 2003.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892. (301) 435–1022. *ehrenspg@csr.nih.gov.*

*Name of Committee:* Cell Development and Function Integrated Review Group, Cell Development and Function 1.

*Date:* June 12–13, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

*Contact Person:* Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892. (301) 435–1219. *sayrem@csr.nib.gov.*

*Name of Committee:* Cell Development and Function Integrated Review Group, Cell Development and Function 4.

*Date:* June 12–13, 2003.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Alexandra Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892. (301) 451–3848. *ainsztea@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Behavioral Medicine: Interventions and Outcomes.

*Date:* June 12–13, 2003.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Westfields, 14750 Conference Center Drive, Chantilly, VA 20151.

*Contact Person:* Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. (301) 435–0677.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 7.

*Date:* June 12–13, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

*Contact Person:* Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892. (301) 435–1242.

*Name of Committee:* Biobehavioral; and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 2.

*Date:* June 12–13, 2003.

*Time:* 9 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Inner Harbor, 300 South Charles Street, Baltimore, MD 21201.

*Contact Person:* Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. (301) 594–6836. (301) 594–6836. *tathamt@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–X 40P: Program Project: Bio-Microelectromechanical Systems.

*Date:* June 12–14, 2003.

*Time:* 7 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Constitution Inn, 150 Second Avenue, Charlestown, MA 02129.

*Contact Person:* Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892. (301) 435–1171. *rosenl@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, T35 Short Term Training Applications.

*Date:* June 13, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Sandy Warren, DMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892. (301) 435–1019.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 30, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–11341 Filed 5–6–03; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

*Proposed Project: The Evaluation of the Buprenorphine Waiver Program: Longitudinal Patient Survey*—New—The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies (DPT), is evaluating a program that permits office-based physicians to obtain Waivers from the requirements of the Narcotic Addict Treatment Act of 1974 (21 U.S.C. 823 (g)). Under the Drug Addiction Treatment Act of 2000 (21 U.S.C. 823 (g)(2)), the Waiver Program permits qualifying physicians to prescribe and dispense buprenorphine, a schedule III narcotic drug recently approved by the FDA for the treatment of opiate addiction. Furthermore, the Drug Abuse Treatment Act specifies that the Secretary of the Department of Health and Human Services make a determination of whether: (1) Treatments provided under the Waiver Program have been effective forms of maintenance treatment and detoxification treatment in clinical settings; (2) the Waiver Program has significantly increased (relative to the beginning of such period) the availability of maintenance treatment and detoxification treatment; and, (3) the Waiver Program has adverse consequences for the public health. In addition to the objectives above, the Evaluation of the Buprenorphine Waiver Program will examine other related objectives, including: (1) Describing the impact of the Waiver-based treatment on the existing treatment system; (2) providing information useful to guide and refine the processing/monitoring system being developed and maintained by CSAT/DPT; and (3) providing baseline data to inform future research and policy concerning the medicalization and mainstreaming of addiction treatment.

The evaluation of the Buprenorphine Waiver Program will be accomplished using three survey efforts. The first of these is a mail survey of addiction physicians from the American Society of Addiction Medicine (ASAM) and/or the American Academy of Addiction Psychiatry (AAAP). That survey will assess early perceptions of physicians specializing in addiction medicine about whether buprenorphine, as it is prescribed and distributed under the Waiver, is a useful tool in the treatment of substance abuse, and whether they have encountered any negative consequences associated with it. Results from this survey will influence the focus and content of two additional proposed surveys to be fielded later in 2003.

The Longitudinal Patient Survey will focus on patients who have received buprenorphine and will assess its availability and effectiveness from the patients' point of view. Beginning in October of 2003, DPT plans to collect longitudinal data from a cohort of about 800 buprenorphine patients to assess the effectiveness of buprenorphine therapy. Patients will be recruited through a sample of prescribing physicians' offices. Office staff will give each eligible buprenorphine patient a study brochure that explains the importance of the study, offers an incentive worth $50, and gives the

patient a toll-free telephone number to call at to complete the survey by telephone.

Patients will be asked a series of questions that will provide baseline data for the evaluation. Follow-up data on the services received, satisfaction with the treatment, and outcomes will be collected at 30 days and 6 months intervals. Survey domains include the following: Patient demographics; Buprenorphine dose over time; Items from the short form of the Addiction Severity Index (ASI); Services being received in addition to medications; Needle-sharing and HIV status; Treatment and substance abuse history, in particular prior experience with medication-based treatment for opioid dependence; Experience, satisfaction with, and general knowledge of, buprenorphine.

A third survey will be conducted later, focusing on the clinical practice and perceived effectiveness of buprenorphine among only those physicians who are actively prescribing the medication. A separate clearance request will be submitted for this physician survey.

The estimated response burden for the longitudinal survey of buprenorphine patients over a period of one year is summarized below.

| | Number of respondents | Responses/ respondent | Total responses | Hours/ response | Total hour burden |
|---|---|---|---|---|---|
| Buprenorphine patients | 800 | 3 | 2,400 | .50 | 1,200 |

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 30, 2003.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 03–11263 Filed 5–6–03; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of the Final Comprehensive Conservation Plan and Summary for Salinas River National Wildlife Refuge, Monterey County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan (CCP) and a Summary for Salinas River National Wildlife Refuge (Refuge) are available for distribution. The CCP, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 and in accordance with the National Environmental Policy Act of 1969, describes how the U.S. Fish and Wildlife Service intends to manage the Refuge for the next 15 years. The compatibility determinations for waterfowl hunting, surf fishing access, wildlife observation and photography, environmental education and interpretation, research, and mosquito control are also available with the CCP.

**DATES:** The Final CCP is available now. The finding of no significant impact (FONSI) was signed on December 20, 2002. Implementation of the plan began after the FONSI was signed.

**ADDRESSES:** Copies of the Final CCP or Summary may be obtained by writing to U.S. Fish and Wildlife Service, Attn: Mark Pelz, California/Nevada Refuge Planning Office, Room W–1916, 2800 Cottage Way, Sacramento, California, 95825. Copies of the plan may be viewed at this address or at the San Francisco Bay NWR Complex Headquarters, 1 Marshlands Road, Fremont, California. The Final CCP will also be available online for viewing and downloading at *http://pacific.fws.gov/planning.*

**FOR FURTHER INFORMATION CONTACT:** Mark Pelz, U.S. Fish and Wildlife Service, California/Nevada Refuge Planning Office, Room W–1916, 2800 Cottage Way, Sacramento, California, 95825; 916–414–6500; fax 916–414–6512.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Salinas River Refuge encompasses 367 acres 11 miles north of Monterey, California, where the Salinas River empties into Monterey Bay. The Refuge is part of the San Francisco Bay National Wildlife Refuge Complex, which has its headquarters in Fremont, California. Refuge lands include a range of terrestrial and aquatic habitats, including coastal dunes and beach, grasslands, wetlands, and riparian scrub. Because of its location within the Pacific Flyway, the Refuge is used by a variety of migratory birds during breeding, wintering, and migration periods. The Refuge also provides habitat for several threatened and endangered species, including western snowy plover, California brown pelican, Smith's blue butterfly, Monterey gilia, and Monterey spineflower. Approximately 40 species that exist or are suspected to exist on the Refuge are considered sensitive by Federal or State agencies. Current recreational uses on the Refuge include wildlife observation and photography, waterfowl hunting, and access to surf fishing.

The availability of the Draft CCP/Environmental Assessment (EA) for 30-day public review and comment was noticed in the **Federal Register** on Wednesday, November 14, 2001, in volume 66, number 220. The Draft CCP/EA identified and evaluated four alternatives for managing the Refuge for the next 15 years. Alternative 1 was the no-action alternative—current Refuge management would continue. Under Alternative 2, the Refuge would focus exclusively on protecting, enhancing, and restoring natural resources and would be closed to all public use except guided tours led by Service staff. Alternative 3 emphasized improving current management through inventories, monitoring, and increasing protection for threatened and endangered species. Existing public use of the Refuge would be improved but not substantially expanded. Under Alternative 4, public use of the Refuge would be improved and expanded. Management programs for endangered species and native habitats would also be expanded and improved to minimize and offset potential effects of increased public use. The Service received eight comment letters on the Draft CCP. The comments received were incorporated into the CCP and are responded to in an appendix to the CCP. Alternative 3 was selected for implementation and is the basis for the Final CCP.

With the management program described in the Final CCP, informational signs and interpretive exhibits will be installed on the Refuge and a wheelchair-accessible trail to the Salinas River will be constructed. In addition, the existing parking lot will be improved (*i.e.*, graded and covered with gravel). The seasonal waterfowl hunting area will be reduced by approximately 15 percent to protect roosting California

brown pelicans. All of the current management activities will continue. Some activities, such as special-status species inventories, will be substantially expanded. New management tools and techniques will include: using prescribed fire to augment mowing and herbicide use in the grassland/shrubland habitat; conducting inventories of all habitats on the Refuge; translocating problem avian predators of the western snowy plover; and creating a geographical information system database to track vegetation and population trends. In addition, the Service will pursue a long-term lease with the State Lands Commission to manage the beach and tidelands below mean high water. Full implementation of this alternative will require increased staffing and funding.

Dated: April 30, 2003.

**D. Kenneth McDermond,**

*Acting Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.*

[FR Doc. 03–11252 Filed 5–6–03; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–070–03–1990–EX]**

### Notice of Intent To Prepare a Supplemental EIS for Golden Sunlight Mine, Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare a supplement to the 1998 Golden Sunlight Environmental Impact Statement (EIS).

**SUMMARY:** This document provides notice that the Bureau of Land Management (BLM) and the Montana Department of Environmental Quality (DEQ) intend to prepare a Supplement to the 1998 Golden Sunlight EIS. This process will incorporate a revised reclamation plan based on a Montana state court decision requiring partial pit backfill.

**DATES:** The BLM and DEQ are seeking comments from individuals, organizations, tribal governments, and Federal, State, and local agencies that are interested or may be affected by the proposed action. The scoping comment period will start with the publication of this notice. Comments will be accepted for 30 days following publication of this notice in the **Federal Register**.

**ADDRESSES:** Send written comments to Golden Sunlight Partial Pit Backfill Supplemental EIS, Butte Field Office, 106 North Parkmont, Butte, Montana 59701, or Montana DEQ, P.O. Box 200901, Helena, Montana 59620–0901.

**FOR FURTHER INFORMATION CONTACT:** David Williams, (406) 533–7655, BLM Butte Field Office, or Greg Hallsten, (406) 444–3276, Montana Department of Environmental Quality.

**SUPPLEMENTARY INFORMATION:** Golden Sunlight Mines, Inc. (GSM) mines and processes gold-bearing ore using facilities located on public and private lands located near Whitehall, Montana. GSM has conducted mining and mineral processing activities since 1975. GSM was permitted through an Environmental Assessment (EA) to proceed with a mine expansion in 1990. Legal action following approval of the mine expansion led to a 1998 EIS and Record of Decision by BLM and the Montana DEQ. Following legal action, a series of Montana District Court rulings ultimately resulted in a ruling requiring GSM to submit a partial pit backfill plan meeting the requirements of Montana law and the judgment of the Court. GSM submitted a revised partial pit backfill plan to the DEQ and BLM on December 2, 2002. The plan submittal is a revised reclamation plan for the open pit. No modifications to the ongoing mining operations are proposed under this submittal; all mining activities are continuing under the approved operating plan. The Supplemental EIS (SEIS) is intended to evaluate the proposed partial pit backfill proposal.

While public participation is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the SEIS. To assist the BLM in identifying and considering issues and concerns on the proposed action, comments on the proposed SEIS should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments, including names and addresses of respondents, may be published as part of the SEIS. Individual respondents may request confidentiality; if you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Dated: February 28, 2003.

**Richard M. Hotaling,**

*Field Manager.*

[FR Doc. 03–11249 Filed 5–5–03; 8:45 am]

**BILLING CODE 4310–$$–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–910–03–1020–PG]**

### Notice of Public Meeting, New Mexico Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) New Mexico Resource Advisory Council (RAC), will meet as indicated below.

**DATES:** The meeting will be held on June 5–6, 2003, at the Ruidoso Convention Center, Rooms 2 and 3, 111 Sierra Blanca Drive, Ruidoso, NM, beginning at 8 a.m. The meeting will adjourn between 4 and 5 p.m. both days. An optional Field Trip is planned for Wednesday, June 4. The three established RAC subcommittees will meet in the late afternoon or evening on Thursday, June 5. Location will be announced at the meeting. The public comment period will begin at 10 a.m. on Friday, June 6, and end at 12 noon.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. At this meeting, the topics we plan to discuss include:

Access Issues
Bark Beetle Infestation
Fire and Fuels Management Plan Amendment/Environmental Assessment
Stewardship Contracting

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

**FOR FURTHER INFORMATION CONTACT:** Theresa Herrera, RAC Coordinator, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P.O. Box 27115, Santa Fe, NM 87502–0115, (505) 438–7517.

Dated: April 30, 2003.

**William S. Condit,**

*Acting State Director.*

[FR Doc. 03–11247 Filed 5–6–03; 8:45 am]

**BILLING CODE 4310–FB–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–310–0777–XG]**

### Notice of Public Meeting: Northwest California Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

**DATES:** The meeting will be held Thursday and Friday, July 17 and 18, 2003, at the Best Western Tree House Inn, 111 Morgan Way, Mt. Shasta, California. On July 17, the meeting convenes at 10 a.m for a field trip to public lands managed by the BLM Redding Field Office. Members of the public are welcome. They must provide their own transportation and lunch. On July 18, the meeting begins at 8 a.m. in the Conference Center of the Best Western Tree House Inn. Time for public comments has been set aside for 1 p.m. on July 18.

**FOR FURTHER INFORMATION CONTACT:** Rich Burns, BLM Ukiah field manager, 2550 North State Street, Ukiah, CA, (707) 468–4000; or BLM Public Affairs Officer Joseph J. Fontana, telephone (530) 252–5332.

**SUPPLEMENTARY INFORMATION:** The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting, agenda topics will include an update on BLM's development of grazing policies, a report from the RAC Chairs meeting held in Washington, DC and RAC development of guidelines for wind energy projects on northwest California public lands. Managers of the BLM Redding, Arcata and Ukiah field offices will present status reports.

All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: April 30, 2003.

**Joseph J. Fontana,**

*Public Affairs Officer.*

[FR Doc. 03–11248 Filed 5–6–03; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–080–1030–PH]**

### Notice of Public Meeting, Upper Columbia-Salmon Clearwater Resource Advisory Council Meeting; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Upper Columbia-Salmon Clearwater (UCSC) District Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** June 18 and 19, 2003. The meeting will begin at 8 a.m. on the first day and end at approximately 5 p.m. on the second day. The public comment period will be from 1–2 p.m. on June 19th. The meeting will begin and end at the BLM Challis Field Office, 801 Blue Mountain Road, Challis, Idaho 83226. On the afternoon of June 18 and the morning of June 19, the RAC will be touring several areas around Challis and then return to the office by 1 p.m. on June 19th to conclude the meeting.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Snook, RAC Coordinator, BLM UCSC District, 1808 N. Third Street, Coeur d'Alene, Idaho 83814 or telephone (208) 769–5004.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The following topics will be discussed at the June 18–19, 2003 meeting:

- Review and approve minutes from March 12–13 meeting.
- Hear reports from and discuss RAC Chair meetings and Tri-RAC OHV subgroup meeting.
- Briefing on Sustainability Conference, BLM Land Acquisition and Disposal Program, RAC Nominations, and Land Use Planning.
- Field tour and discussions about Rangeland Standards and Guidelines, noxious weeds, Challis wild horse herd, proposed ATV trail, and other natural resource issues.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: May 1, 2003.

**Lewis M. Brown,**

*Acting District Manager.*

[FR Doc. 03–11264 Filed 5–6–03; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–930–03–2824–PG–YY99]**

### Notice of Intent To Prepare a Fire and Fuels Management Plan and Amend Resource Management Plans in New Mexico and Texas

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare a Fire and Fuels Management Plan Amendment and Environmental Assessment (EA) for Nine Land Use Plans in New Mexico and Texas.

**SUMMARY:** This document provides notice that the BLM, New Mexico State Office, intends to prepare a Fire and Fuels Management Plan Amendment with an associated EA for BLM lands in New Mexico and Texas. This Plan Amendment will amend nine Resource Management Plans (Carlsbad 1988, Farmington 2003, Mimbres 1993, Rio Puerco 1986, Roswell 1997, Socorro

1989, Taos 1988, Texas 1996, White Sands 1986) in eight Field Offices: Albuquerque, Amarillo, Carlsbad, Farmington, Las Cruces, Roswell, Socorro, and Taos. The purpose of the amendment is to incorporate current Fire Management Policy into Resource Management Plans, to restore fire as an integral part of fire-adapted ecosystems in order to meet resource management objectives, to improve the protection of human life and property through the reduction of hazardous fuels, and to establish consistent methods of managing fire and fuels on BLM-administered public lands in New Mexico and Texas.

This planning activity encompasses approximately 12.8 million acres public lands within the states of New Mexico and Texas. The planning area includes all surface lands managed by BLM in New Mexico and Texas, including El Malpais National Conservation area and Kasha-Katuwe Tent Rocks National Monument, but not lands for which BLM only administers the sub-surface, or mineral, estate. A collaborative process will be used to involve other Federal agencies, Native American tribes, conservation groups, recreationists, the public, and other stakeholders throughout the planning process to ensure that local, regional, and national issues and concerns are addressed.

This Plan Amendment will analyze fires and fuels management actions and their impacts on the human environment for public lands administered by the eight New Mexico and Texas BLM Field Offices in one document in order to ensure consistency and collaboration among the offices and the interested public.

**DATES:** The BLM is now soliciting written comments on issues and concerns that should be considered during the development and analysis of the Proposed Fire and Fuels Management Plan Amendment. While written comments will be accepted throughout the planning process, to be most useful, comments should be received on or before the end of the comment period at the addresses listed below. The comment period will last 60 days from the publication of this notice in the **Federal Register**. To ensure local community participation and input, public workshops will be held during this comment period in Albuquerque, Amarillo, Carlsbad, Farmington, Las Cruces, Roswell, Socorro, and Taos. Specific dates and locations for public participation will be published in local papers, broadcast on local community calendars, and posted on the BLM New Mexico/Oklahoma/Kansas/Texas Web site (*http://www.nm.blm.gov*) at a later date but not less than 15 days prior to the meeting.

**ADDRESSES:** If you wish to comment, request additional information, or request to be put on the mailing list, you may do so by any of several methods. You may mail, hand deliver, or call your comments or requests to: Signa Larralde, Project Manager, Bureau of Land Management, New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87505, (505) 438–7637. You may also comment via a comment form that will be posted on the BLM New Mexico/Oklahoma/Kansas/Texas Web site (*http://www.nm.blm.gov*).

Comments, including names and street addresses of respondents, will be available for public review at the BLM New Mexico State Office during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EA. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The current RMPs and all other documents relevant to this planning process are available for public review at the New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87505, Monday through Friday (excluding legal holidays), from 7:45 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Signa Larralde, Project Manager, (505) 438–7637, or John Selkirk, Fire Planner, (505) 438–7431, New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87505.

**SUPPLEMENTARY INFORMATION:** The proposed Plan Amendment will: (1) Establish Field Office-wide objectives for fire and fuels management; (2) delineate fire management areas; (3) identify broad vegetation treatments; (4) identify general restrictions on fire management practices; and (5) determine the criteria by which the broad treatment areas can be changed. BLM has identified general issues for this planning effort, including: protection of human life; protection of property; protection of natural/cultural resources; integration of fire and resource management; and protection of air quality. These issues, along with others that may be identified through public participation, will be considered during the planning process. BLM has identified the following preliminary planning criteria to guide the planning process: compliance with all legal mandates of the Federal Land Policy and Management Act of 1976, the National Environmental Policy Act of 1969, the Federal Advisory Committee Act, the Administrative Procedures Act, and the BLM planning regulations in 43 CFR part 1600, as well as consistency with Fire Plans of other agencies and State and local jurisdictions. Additional planning criteria may be identified during the comment period.

Existing information will be used to develop the Plan Amendment and EA. An interdisciplinary approach will be used to develop the Plan Amendment in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include but are not limited to fire and fuels management, rangeland management, outdoor recreation management, archaeology, wildlife management, wilderness management, hydrology, soils science, sociology, and economics. Selectable alternatives must contribute to the achievement of New Mexico BLM public and land standards, the purpose of the Proposed Plan Amendment, and protection of communities at risk from catastrophic wildfire.

The planning process will utilize a collaborative approach. This will allow the public, Tribes, State and Federal agencies, local elected officials, and BLM specialists to participate in identifying issues and developing and analyzing alternatives. In addition to the initial public comment period and workshops, the public will also be invited, through a **Federal Register** notice, local newspapers, and mailings, to review the proposed Plan Amendment and provide comments. The Governors of New Mexico and Texas, County Commissioners for counties in New Mexico and Potter County, Texas, and potentially affected members of the public will be notified of all meetings and comment periods.

Agency representatives and interested persons are invited to visit with BLM officials at any time during the planning process.

Dated: January 31, 2003.

**Linda S.C. Rundell,**

*New Mexico State Director.*

[FR Doc. 03–11250 Filed 5–6–03; 8:45 am]

**BILLING CODE 4310–FB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–958–1430–ET; HAG–03–0073; OR–57068]**

### Notice of Proposed Withdrawal and Opportunity for Public Meeting; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs proposes to withdraw approximately 19.2 acres of public lands for a period of 20 years, to protect and preserve archeological, historical, and cultural resources of great significance to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians. This notice closes the lands for up to 2 years from surface entry and mining.

**EFFECTIVE DATE:** Comments and requests for a public meeting must be received by August 5, 2003.

**ADDRESSES:** Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, PO Box 2965, Portland, Oregon 97208–2965.

**FOR FURTHER INFORMATION CONTACT:** Linda Petterson, Coos Bay Field Office, 541–751–4207, or, Charles R. Roy, BLM Oregon/Washington State Office, 503–808–6189.

**SUPPLEMENTARY INFORMATION:** The Bureau of Indian Affairs has filed an application to withdraw the following described public lands from settlement, sale, location and entry under the general land laws, including the mining laws, subject to valid existing rights:

**Willamette Meridian**

T. 26 S., R. 14 W.,
Gregory Point
sec. 4, lot 5.
T. 26 S., R. 14 W.,
Chief's Island sec. 4, unsurveyed island lying north of lot 5.

The areas described aggregates approximately 19.2 acres in Coos County.

The purpose of the proposed withdrawal is to protect and preserve archeological, historical, and cultural resources of great significance to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the above stated address.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the above stated address within 90 days from the date of publication of this notice in the **Federal Register**. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period will be limited to ongoing United States Coast Guard activities, and those uses currently authorized by the United States Coast Guard, and the current activities of tribal members.

Dated: April 17, 2003.

**Robert D. DeViney, Jr.,**

*Chief, Branch of Realty and Records Services.*

[FR Doc. 03–11251 Filed 5–6–03; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Going-to-the-Sun Road (GTSR) Rehabilitation Plan Final Environmental Impact Statement, Glacier National Park, Montana

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of Availability of the Final Environmental Impact Statement for the Going-to-the-Sun Road Rehabilitation Plan, Glacier National Park.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service announces the availability of the Final Environmental Impact Statement for the Going-to-the-Sun Road Rehabilitation Plan, Glacier National Park, Montana.

**DATES:** The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the notice of availability of the Final Environmental Impact Statement.

**ADDRESSES:** Information will be available for public review in the office of the Superintendent and at the following locations:

Office of the Superintendent, Glacier National Park, West Glacier, MT 59936, (406) 888–7901.
Glacier National Park, Hudson Bay District Office, St. Mary, MT 59417, (406) 732–7707.
Project Management Office, Glacier National Park, West Glacier, MT 59936, (406) 888–7972.
Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, P.O. Box 25287, Denver, CO 80225–0287, (303) 969–2851 or 2377.
Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington, DC 20240, (202) 208–6843.
Bozeman Public Library, 220 East Lamme, Bozeman, MT 59715.
Browning Public Library, P.O. Box 550, Browning, MT 59417.
Butte County Library, 226 W. Broadway, Butte, MT 59701.
Cardston Public Library, 25 3rd Avenue West, Cardston, Alberta Canada TOK OKO.
Choteau Public Library, 17 North Main Avenue, Choteau, MT 59422.
Columbia Falls Branch Library, 120 6th Street West, Columbia Falls, MT 59912.
Cut Bank Library, 21 1st Avenue SE, Cut Bank, MT 59427.
Flathead County Library, 247 1st Avenue East, Kalispell, MT 59901.
Great Falls Public Library, 301 2nd Avenue North, Great Falls, MT 59401.
Lethbridge Public Library, 810–5 Avenue South, Lethbridge, Alberta, Canada T1J 4C4.
Lewis and Clark Library, 120 South Last Chance Gulch, Helena, MT 59624.
Missoula Public Library, 301 East Main, Missoula, MT 59802.
Parmly Billings Library, 501 North Broadway, Billings, MT 59101.
Pincher Creek Municipal Library, 895 Main Street, Pincher Creek, Alberta, Canada TOK 1WO.
Waterton Lakes National Park, Park Administration Building, 215 Mountain View Road, Alberta, Canada TOK 2MO.

Whitefish Branch Library, 9 Spokane Avenue, Whitefish, MT 59937.

**FOR FURTHER INFORMATION CONTACT:** Mary Riddle, Glacier National Park, 406–888–7898.

Dated: April 14, 2003.

**Michael D. Sunner,**

*Director, Intermountain Region, National Park Service.*

[FR Doc. 03–11268 Filed 5–6–03; 8:45 am]

**BILLING CODE 4312–HX–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Draft Commercial Services Plan and Draft Environmental Impact Statement, Glacier National Park, MT

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of availability of the Draft Environmental Impact Statement for the Draft Commercial Services Plan, Glacier National Park.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(C), the National Park Service announces the availability of the Draft Environmental Impact Statement for the Draft Commercial Services Plan, Glacier National Park, Montana.

**DATES:** The National Park Service will accept comments on the Draft Environmental Impact Statement from the public through July 7, 2003. The schedule for public meetings will be announced separately.

**ADDRESSES:** Information will be available for public review and comment in the office of the Superintendent, and at the following locations.

Office of the Superintendent, Glacier National Park, West Glacier, MT 59936, (406) 888–7901.

Glacier National Park, Hudson Bay District Office, St. Mary, MT 59417, (406) 732–7707.

Project Management Office, Glacier National Park, West Glacier, MT 59936, (406) 888–7972.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, PO Box 25287, Denver, CO 80225–0287, (303) 969–2851 or 2377.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, (202) 208–6843.

Bozeman Public Library, 220 East Lamme, Bozeman, MT 59715.

Browning Public Library, PO Box 550, Browning, MT 59417.

Butte County Library, 226 W. Broadway, Butte, MT 59701.

Cardston Public Library, 25 3rd Avenue West, Cardston, Alberta Canada TOK OKO.

Choteau Public Library, 17 North Main Avenue, Choteau, MT 59422.

Columbia Falls Branch Library, 120 6th Street West, Columbia Falls, MT 59912.

Cut Bank Library, 21 1st Avenue SE., Cut Bank, MT 59427.

Flathead County Library, 247 1st Avenue East, Kalispell, MT 59901.

Great Falls Public Library, 301 2nd Avenue North, Great Falls, MT 59401.

Lethbridge Public Library, 810–5 Avenue South, Lethbridge, Alberta, Canada T1J 4C4.

Lewis and Clark Library, 120 South Last Chance Gulch, Helena, MT 59624.

Missoula Public Library, 301 East Main, Missoula, MT 59802.

Parmly Billings Library, 501 North Broadway, Billings, MT 59101.

Pincher Creek Municipal Library, 895 Main Street, Pincher Creek, Alberta, Canada TOK 1WO.

Waterton Lakes National Park, Park Administration Building, 215 Mountain View Road, Alberta, Canada TOK 2MO.

Whitefish Branch Library, 9 Spokane Avenue, Whitefish, MT 59937.

**FOR FURTHER INFORMATION CONTACT:** Mary Riddle, Glacier National Park, 406–888–7898.

**SUPPLEMENTARY INFORMATION:** If you wish to comment, you may submit your comments by any one of the several methods. You may mail comments to Glacier National Park, Attn: CSP/DEIS, West Glacier, MT 59936. You may also comment via the Internet to *glac_public_comments@nps.gov*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: CSP/DEIS'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at Project Management Office, 406–888–7972. Finally, you may hand-deliver comments to Glacier National Park, Going-to-the-Sun Road, West Glacier, MT. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents must request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: April 14, 2003.

**Michael D. Synder,**

*Director, Intermountain Region, National Park Service.*

[FR Doc. 03–11269 Filed 5–6–03; 8:45 am]

**BILLING CODE 4312–HX–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Multimodal Transportation Plan/ Environmental Impact Statement, Arches National Park, UT

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of Intent to prepare an environmental impact statement for a Multimodal Transportation Plan, Arches National Park.

**SUMMARY:** Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for a Multimodal Transportation Plan for Arches National Park. The environmental impact statement will be approved by the Director, Intermountain Region.

The Multimodal Transportation Plan will serve as a management and decision making tool for developing short and long-term solutions to problems associated with transportation in and around Arches National Park. The primary objectives of the plan include (1) establishing regional partnerships between the park and its gateway communities to reduce traffic impacts in both the park and surrounding communities, minimize duplication of services and facilities, and provide links to regional pathways to improve recreational opportunities in the park; (2) increasing the range of travel mode choices within the park, other than via private automobile, available to visitors, residents and employees of all ages and physical abilities; (3) provisions for safe travel throughout the park by all modes; and (4) protecting the park's natural and cultural resources from impacts attributable to vehicles and visitor use, including inappropriate parking along

roadways or parking area edges, noise, air quality, and wildlife mortality.

From January, 2003 through February, 2003 the National Park Service conducted public scoping (public meetings and solicitation of comments from state, county and town agencies and organizations; park neighbors; state historic preservation officer; and associated American Indian tribes) for the Multimodal Transportation Plan in anticipation of preparing an environmental assessment for the project. Due to the degree to which potential impacts are uncertain, the National Park Service is proceeding with preparation of an environmental impact statement.

**DATES:** The National Park Service will conduct further public scoping for the environmental impact statement for a period of 30-days beyond publication of this Notice of Intent.

**ADDRESSES:** You may mail comments to: Multimodal Transportation Plan, Superintendent's Office, Arches National Park, PO Box 907, Moab, UT 84532–0907. You may also hand-deliver comments to the Superintendent's Office, Arches National Park, Moab, Utah (Attn: Multimodal Transportation Plan).

**FOR FURTHER INFORMATION CONTACT:** Superintendent Rock Smith, Arches National Park, PO Box 907, Moab, UT 84532–0907; Tel: (435) 719–2201; FAX: (435) 719–2305; e-mail: *rock_smith@nps.gov.*

**SUPPLEMENTARY INFORMATION:** It is the practice of the National Park Service to make comments received during the scoping process, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: April 1, 2003.

**Karen P. Wade,**

*Director, Intermountain Region.*

[FR Doc. 03–11270 Filed 5–6–03; 8:45 am]

**BILLING CODE 4312–06–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on April 8, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Santa Barbara Infrared, Santa Barbara, CA; Lockhead Martin Information Systems, Orlando, FL; and Lucent Technologies, Murray Hill, NJ have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notification disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on January 21, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 14, 2003 (68 FR 7613).

**Constance K. Robinson,**

*Director of Operations Antitrust Division.*

[FR Doc. 03–11366 Filed 5–6–03; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on April 8, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Applicos bv, Heerde, THE NETHERLANDS; Precision Photonics, Boulder, CO; and Mass Interfact Connections GmbH (MIC), Wolznach, GERMANY have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on January 21, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 14, 2003 (68 FR 7613).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 03–11367 Filed 5–6–03; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the

workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

**Negative Determinations for Worker Adjustment Assistance**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

**None**

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2) (A) (I.C) (Increased imports) and (a)(2)(B) (II.C) (has shifted production to a country not under the free trade agreement with U.S.) have not been met.

*TA–W–51,066; Komag, Inc., Materials Technology Div. (KMT), Santa Rosa, CA*

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

*TA–W–50,562; Hubble Lighting, Inc., Martin, TN*
*TA–W–51,397; McCrosky Tool Corp., Meadville, PA*
*TA–W–51,463; Fishing Vessel (F/V) Kingtail, Port Townsend, WA*
*TA–W–51,343; Q Media Services, Westborough, MA*
*TA–W–51,052; Fremont Wire Co., Leggett and Platt, Inc., Div., Fremont, IN*
*TA–W–51,128; DT Precision Assembly Industries, Erie, PA*
*TA–W–50,475; Dynamatic Corp., Kenosha, WI*
*TA–W–51,454; Heiting Tool & Die, Inc., Appleton, WI*
*TA–W–51,374; Independent Tool & Manufacturing, Inc., Meadville, PA*
*TA–W–50,817; Alltrista Consumer Products Co., formerly Diamond Brands, Inc., a Div. of Jarden Corp., Strong ME*
*TA–W–51,151; North Star Steel, a wholly owned subsidiary of Cargill, Inc., Kingman, AZ*
*TA–W–51,229; Uniloy Milacron, Manchester, MI*
*TA–W–50,497; Fishing Vessel (F/V) Northern Star, King Cove, AK*
*TA–W–51,419; Vaisala, Inc., a wholly owned subsidiary of Vaisala Oyj, Columbus Operations, Plain City, OH*
*TA–W–51,465; Little Narrows, Inc., Kodiak, AK*
*TA–W–50,604; Cessna Aircraft Co., Wichita, KS*
*TA–W–51,263; Caterpillar, Inc., Hydraulics & Hydraulic Systems Business Unit, Joliet, IL: ''All workers of the V/P/M Section, Cylinders Section, and Hyraulic Systems Business Unit, Joliet, IL are denied eligibility to apply for adjustment assistance.*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–50,541; Prudential Insurance Co. of America, Inc., Plymouth, MN*
*TA–W–51,527; Robert Half Technology, a Robert Half International Co., Oklahoma City, OK*
*TA–W–51,447; Netmanage, Inc., Bellingham Engineering, Bellingham, WA*
*TA–W–51,451; Aetna, Tyler, TX*
*TA–W–51,328; Flour Facility and Plant Services, Inc., Basf Wilmington Site, Wilmington, NC*
*TA–W–51,358; Dollar Financial Group, Inc., Berwyn, PA*
*TA–W–51,184; ABN Amro Bank, N.V., Miami, FL*
*TA–W–51,191; Getronicswang Company LLC, d/b/a Getronics, Valley View, OH*
*TA–W–51,193; Journey Bottling Co., LLC, Santa Rosa, CA*
*TA–W–51,210; Intel Corp., Ethernet Switching Operations (ESO), Santa Clara, CA*
*TA–W–51,099; Allegheny Ludlum, Melt Shop and Rolling Mill Div., Houston, PA*
*TA–W–51,025; Zyquest, Inc., Depere, WI*
*TA–W–51,520 Bethlehem Steel Railroads–PBNE, Martin Tower Facility, Bethlehem, PA*

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) have not been met.

*TA–W–51,496; Fishing Vessel (F/V) Au, Jeneau, AK*
T–W–51,513; State of Alaska Commercial Fisheries Entry Commission Permit #S04T64695F, Togiak, AK
*TA–W–51,154A; Progress Casting Group, Inc., Plymouth, MN*

The investigation revealed that criterion (a)(2)(A) (I.B.) (Sales or production, or both, did not decline) and (II.C) (has shifted production to a country not under the free trade agreement with the U.S.) have not been met.

*TA–W–50,677; J.D. Phillips Corp., Alpena, MI*

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

*TA–W–50,456; J and A Industrial Sheetmetal Co., Bend, OR*
*TA–W–50,778; Great Northern Bark Company, Libby, MT*

The following certification has been issued. The requirement of (a)(2)(A) (increased imports) of Section 222 has been met.

*TA–W–51,246; Cold Metal Products, Youngstown, OH*

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

*TA–W–50,744; Warren Fabricating Corp., Niles, OH: January 28, 2002.*
*TA–W–51,039; Calvin Klein, Inc., New York, NY: March 31, 2002.*
*TA–W–51,108; Defender, Inc./Starr Supporter, Philadelphia, PA: February 27, 2002.*
*TA–W–50,788; Republic Engineered Products LLC, a/k/a/ Republic Technologies International LLC, Canton, OH: April 17, 2003.*
*TA–W–50,812; Federal-Mogul, Power Train Div., Blacksburg, VA: January 24, 2002.*
*TA–W–50,826; Allegheny Steel Co., a subsidiary of Allegheny Technologies, Massillon, OH: January 30, 2002.*
*TA–W–51,325; Powerwave Technologies, Santa Ana, CA: March 13, 2002.*
*TA–W–51,105; Dinaire, LLC, Buffalo, NY: February 25, 2002.*
*TA–W–50,445; Coe Manufacturing Co., Painesville, OH: December 18, 2001.*
*TA–W–51,404; Texstyle, Inc., Manchester, KY: March 21, 2002.*
*TA–W–51,259; TTM Technologies, Inc., Burlington Facility, Redmond, WA: March 20, 2002.*
*TA–W–51,223; PPG Fiberglass Products, Shelby, NC: March 17, 2002.*
*TA–W–51,069; Micron Technology, Inc., Lehi, UT: March 3, 2002.*

*TA–W–51,363; Weyerhaeuser Co., Western Manufacturing Purchasing, Lebanon, OR: March 27, 2002.*

*TA–W–51,271; James Moore & Son, Brownsville, TN: March 13, 2002.*

*TA–W–51,378; American Quality Ceramics, Bangs, Texas: March 31, 2002.*

*TA–W–50,622; Dallas Semiconductor/ Maxim, Dallas, TX: January 9, 2002.*

*TA–W–51,274; RFD Publications, LLC, Wilsonville, OR: March 19, 2002.*

*TA–W–51,442; Stora Enso, Oyj, Stora Enso, Duluth Paper Mill, Duluth, MN: March 31, 2002.*

*TA–W–50,709; Coilcraft, Inc., Cary, IL: January 20, 2002.*

*TA–W–51,154; Progress Casting Group, Inc., Albert Lea, MN: March 7, 2002.*

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

*TA–W–51,329; Dana Corp., Perfect Circle Div., Richmond Machining Plant, Richmond, IN: March 26, 2002.*

*TA–W–50,847; Elmer's Products, Inc., Guilford Road, Bainbridge, NY: January 31, 2002.*

*TA–W–51,087; Wacker Siltronic Corp., Portland, OR: March 6, 2002.*

*TA–W–51,133; The Relizon Co., Newark, OH: March 13, 2002.*

*TA–W–51,179; Standard Corp., Duncan SC: March 14, 2002.*

*TA–W–50,642; Motorola, Inc., Broadband Communications Sector, Headend Infrastructure Unit, Fort Worth, TX: November 27, 2001.*

*TA–W–51,435; Breg, Inc., including leased workers of Secure Staffing, Express Personnel, The Eastridge Group, Kelly Services, Omni Express, and Westaff, Vista, CA: April 4, 2002.*

*TA–W–51,142; Vaisala, Inc., a wholly owned subsidiary of Vaisala Oyj, Sunnyvalle, CA: March 11, 2002.*

*TA–W–50,896; The Eaton Corp., Powertrain and Specialty Controls Operation, (including leased workers from Spherion Staffing and Adecco Staffing), Rochester Hills, MI: January 15, 2002.*

*TA–W–51,406; Torque Traction Manufacturing Technologies, Inc., a wholly owned subsidiary of Dana Corp., Whitsett, NC: March 24, 2002.*

*TA–W–51,212; Siemens VDO Automotive, VDO North America, LLC, Cheshire, CT: March 14, 2002.*

*TA–W–51,414; Windsor Forestry Tools, LLC, a wholly owned subsidiary of Blount, Inc., Milan, TN: March 20, 2002.*

*TA–W–51,351; Trade Wind Apparel, Inc., Commerce, GA: March 26, 2002.*

*TA–W–51,318; Ametek Specialty Motors, Chambersburg, PA: March 25, 2002.*

*TA–W–51,294; Acraline Products, Inc., Tipton, IN: March 24, 2002.*

*TA–W–51,300; Fujitsu Ten Corporation of America, a wholly owned subsidiary of Fujitsu Ten Limited, Rushville, IN: March 21, 2002.*

*TA–W–51,446; Fishing Vessel (F/V) Lady Marion, Homer, AK: April 3, 2002.*

*TA–W–51,452; Finegood Moldings, Inc., d/b/a Good Companies, Laminating Department, Carson, CA: April 1, 2002.*

*TA–W–51,461; Gilliam Candy Co., a division of Gilliam Candy Brands, Inc., Paducah, KY: April 3, 2002.*

*TA–W–51,508; Andrew Corporation, Rigid Waveguide Assemblies, Orland Park, IL: April 3, 2002.*

*TA–W–50,681; West Mill Clothes, Inc., Woodside, NY: January 23, 2002.*

*TA–W–51,316; Medsep Corp., d/b/a Pall Medical, Covina, CA: March 19, 2002.*

*TA–W–51,375; U.S. Repeating Arms Co., Inc., New Haven, CT: March 31, 2002.*

*TA–W–51,263; Caterpillar, Inc., Hydraulics & Hydraulic Systems Business Unit, Joliet, IL: March 6, 2002*—All workers of the Miscellaneous Fabrication section of Caterpillar, Inc., Hydraulics and Hydraulic Systems Business Unit, Joliet, IL engaged in the production of tilt braces are eligible to apply for adjustment assistance.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

*TA–W–51,276; Radio Frequency Systems, Inc., a subsidiary of Alcatel N.A. Cable Systems, Inc., Corvallis, OR: March 21, 2002.*

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Public Law 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), subchaper D, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

**Negative Determinations NAFTA–TAA**

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

**None**

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

**None**

**Affirmative Determinations NAFTA–TAA**

**None**

I hereby certify that the aforementioned determinations were issued during the month of April 2003.

Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 28, 2003.

**Terrence Clark,**

*Acting Director, Division of Trade Adjustment Assistance.*

[FR Doc. 03–11284 Filed 5–6–03; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,516]**

### Aerotek Automotive, Kentwood, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, the Department initiated an investigation on April 16, 2003, in response to a petition filed by a State agency representative on behalf of workers at Aerotek Automotive, Kentwood, Michigan.

The Department issued an amended certification (TA–W–42,008), to include leased workers of Aerotek Automotive producing candy and mints at Kraft Foods, Lifesavers Company, Holland, Michigan.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 25th day of April, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–11276 Filed 5–6–03; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–50,643]**

### Aran Mold & Die Company, Incorporated, Elmwood Park, NJ; Notice of Negative Determination on Reconsideration

On April 15, 2003, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice will soon be published in the **Federal Register**.

The Department initially denied workers of Aran Mold & Die Company, Inc., Elmwood Park, New Jersey because they did not produce an article within the meaning of section 222 of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by section 222 of the Trade Act of 1974, and this determination has been upheld in the U.S. Court of Appeals.

The petitioner asserts that subject firm workers produced a product (plastic injection molds) and that sales and production declines were attributable to customers who imported competitive products. To support the latter claim, the petitioner provided the contact information for two major declining customers.

The Department examined the petitioner claims and verified that the petitioning worker group did produce a product. Further, two customers were surveyed regarding their purchases of competitive plastic injection molds in 2001 and 2002. Neither of these customers reported imports of plastic injection molds during the relevant period.

Upon further analysis, it was revealed that the subject firm ceased production in October of 2001, well beyond the relevant period.

**Conclusion**

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Aran Mold & Die Company, Inc., Elmwood Park, New Jersey.

Signed in Washington, DC, this 21st day of April, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–11275 Filed 5–6–03; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–41,840 and TA–W–41,840A]**

### Corbin, Ltd, Huntington, WV and Corbin, Ltd, Ashland, KY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 31, 2002, applicable to workers of Corbin, Ltd., Huntington, West Virginia. The notice was published in the **Federal Register** on January 15, 2003 (68 FR 2075).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's pants and shorts, predominantly wool. New findings show that worker separations occurred at the Ashland, Kentucky facility of the subject firm. Workers at Ashland, Kentucky cut men's pants for the Huntington, West Virginia location as well as cut and sew men's suits, sport coats and jackets for the subject firm.

Accordingly, the Department is amending the certification to cover workers at Corbin, Ltd., Ashland, Kentucky.

The intent of the Department's certification is to include all workers of Corbin, Ltd. who were adversely affected by increased imports.

The amended notice applicable to TA-W–41,840 is hereby issued as follows:

All workers of Corbin, Ltd., Huntington, West Virginia (TA–W–41,840) and Corbin, Ltd., Ashland, Kentucky (TA–W–41,840A), who became totally or partially separated from employment on or after June 21, 2001, through December 31, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 23rd day of April 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–11281 Filed 5–6–03; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–50,734]**

### Genesis Designs, Bend, OR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Genesis Designs, Bend, Oregon. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–50,734; Genesis Designs, Bend, Oregon (April 29, 2003).

Signed in Washington, DC, this 30th day of April, 2003.

**Terrence Clark,**

*Acting Director, Division of Trade Adjustment Assistance.*

[FR Doc. 03–11277 Filed 5–6–03; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–41,669]**

### Hankinson International Now Known as SPX, Corporation, Pneumatic Products Corporation, Washington, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 28, 2002, applicable to workers of Hankinson International, Washington, Pennsylvania. The notice was published in the **Federal Register** on September 10, 2002 (67 FR 57456).

At the request of the United Steelworkers of America, Local 14693, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of compressed air treatment equipment.

New information shows that SPX Corporation purchased Hankinson Corporation, Washington, Pennsylvania in February, 2003 and is now known as SPX Corporation, Pneumatic Products Corporation. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for SPX Corporation, Pneumatic Products Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Hankinson International, Washington, Pennsylvania who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,669 is hereby issued as follows:

All workers of Hankinson International, now known as SPX Corporation, Pneumatic Products Corporation, Washington, Pennsylvania, who became totally or partially separated from employment on or after May 24, 2001, through August 28, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of April 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–11280 Filed 5–6–03; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–42,008]**

### Kraft Foods, Lifesavers Company, Including Leased Workers of Aerotek Automotive, Holland, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 19, 2002, applicable to workers of Kraft Foods, Lifesavers Company, located in Holland, Michigan. The notice was published in the **Federal Register** on September 19, 2002 (67 FR 63159).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of hard candy and mints. An official of Kraft Foods, Lifesavers Company, reports that leased workers of Aerotek Automotive, Kentwood, Michigan, were engaged in producing candy and mints at the Lifesavers Company plant in Holland, Michigan.

It is the Department's intent to include all workers of the firm affected by increased imports. Therefore, the Department is amending the certification to include workers of Aerotek Automotive producing hard candy and mints at Kraft Foods, Lifesavers Company, Holland, Michigan.

The amended notice applicable to TA–W–42,008 is hereby issued as follows:

All workers of Kraft Foods, Lifesavers Company, Holland, Michigan, and leased workers of Aerotek Automotive, producing hard candy and mints at Kraft Foods, Lifesavers Company, Holland, Michigan, who became totally or partially separated from employment on or after August 14, 2001, through September 19, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 25th day of April, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–11278 Filed 5–6–03; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–50,579]**

### Thomson 60 Case, LLC, a Subsidiary of Thomson Industries, Inc., Lancaster, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 17, 2003, applicable to workers of Thomson 60 Case, LLC, a subsidiary of Thomson Industries, Inc., Lancaster, Pennsylvania. The notice was published in the **Federal Register** on April 2, 2003 (68 FR 16094).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce steel shafting.

New findings show that there was a previous certification, TA–W–37,747, issued on June 12, 2000, for workers of Thomson 60 Case, LLC, Lancaster, Pennsylvania who were engaged in employment related to the production of steel shafting. That certification expired June 12, 2002. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from January 3, 2002, to June 13, 2002, for workers of the subject firm.

The amended notice applicable to TA–W–50,579 is hereby issued as follows:

All workers of Thomson 60 Case, LLC, a subsidiary of Thomson Industries, Inc., Lancaster, Pennsylvania, who became totally or partially separated from employment on or after June 13, 2002, through March 17, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 23rd day of April, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–11279 Filed 5–6–03; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–50,448]**

### Universal Instruments Corporation, A Subsidiary of Dover Corporation, Surface Mount Division, Conklin, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 11, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on February 14, 2003 and published in the **Federal Register** on March 10, 2003 (68 FR 11409).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Universal Instruments Corporation, a subsidiary of Dover Corporation, Surface Mount Division, Conklin, New York, was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. Imports of electronic assembly equipment did not contribute importantly to layoffs at the subject firm.

The request for reconsideration alleges that the company was importing competitive products from China. To further support this allegation, a page was attached to the reconsideration request titled ''China Manufacturing Localization Program'', with a series of products and part numbers. The form also appears to contain information about vendors who are bidding on production for different parts and, in some cases vendors who were selected. The petitioner asserted that all of these parts involved Chinese production ''now and in future''. She further asserted that all of these parts were being imported back to the subject facility ''to be installed and tested''. The petitioner made particular note of two parts: Flexjet spindle assemblies and dual beam cable harnesses. Although not stated directly, it appears that the petitioner is implying that these alleged imported products are like or directly competitive with products produced at the subject firm and therefore the petitioning workers should be eligible for trade adjustment assistance.

When contacted in regard to these allegations, a company official confirmed data that was revealed in the original investigation, that while the company had shifted production to China, this production was used exclusively to serve the Asian market and thus there were no imports. He further stated that the company had several localization projects, but they all involved production that had always been outsourced and therefore not produced by the company. Additionally, the China localization project involved finding vendors closed to Asian manufacturing facilities that served local customers and therefore do not involve U.S. imports.

In regard to the two parts highlighted by the petitioner, the company contact stated that the Flexjet spindle assemblies were currently outsourced to a domestic producer, and that dual beam cable harnesses had never actually been made by the subject facility.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of April 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–11283 Filed 5–6–03; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–50,472]**

### Sharon Tube Company, Sharon, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 3, 2003, the United Steelworkers of America, Local 1355, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on January 15, 2003, and published in the **Federal Register** on February 6, 2003 (68 FR 6211).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Sharon Tube Company, Sharon, Pennsylvania was denied because criterion (2) was not met. Production of steel pipe and tubing at the subject plant increased from 2001 to 2002.

In the request for reconsideration, the union alleged that there was no production at the subject facility during the relevant period.

When contacted for clarification in regard to this allegation, the union official specified that there were two weeks in December of 2002 during which the plant was temporarily shutdown.

A temporary shut down has no bearing on the failure of the petitioning worker group to meet criterion (2) of the group eligibility requirements for trade adjustment assistance.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of April, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–11282 Filed 5–6–03; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Authorization for Release of Medical Information (CM–936). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before July 7, 2003.

**ADDRESSES:** Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *hbell@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Federal Mine Safety and Health Act of 1977 as amended (30 U.S.C. 923), and 20 CFR 725.405 require that all relevant medical evidence be considered before a decision can be made regarding a claimant's eligibility for benefits. The CM–936 is a form that gives the claimant's consent for release of information required by the Privacy Act of 1974, and contains information required by medical institutions and private physicians to enable them to release pertinent medical information. This information collection is currently approved for use through November 30, 2003.

#### II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

#### III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to obtain the claimant's consent for medical institutions and private physicians to release medical information to the Division of Coal Mine Workers' Compensation as evidence to support their claim for benefits. Failure to gather this information would inhibit the adjudication of black lung claims because pertinent medical data would not be considered during the processing.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Authorization for Release of Medical Information.

*OMB Number:* 1215–0057.

*Agency Number:* CM–936.

*Affected Public:* Individual or households.

*Total Respondents:* 1,500.

*Total Responses:* 1,500.

*Time per Response:* 5 minutes.

*Frequency:* Once.

*Estimated Total Burden Hours:* 125.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 1, 2003.

**Bruce Bohanon,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 03–11273 Filed 5–6–03; 8:45 am]

**BILLING CODE 4510–CK–P**

## DEPARTMENT OF LABOR

### Wage and Hour Division

### Special Industry Committee for All Industries in American Samoa; Appointment; Convention; Hearing; Extension of Comment Period

**AGENCY:** Wage and Hour Division, Labor.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** This document extends the period for filing pre-hearing statements with the Special Industry Committee No. 25. Each pre-hearing statement shall contain the data specified in 29 CFR 511.8 of the regulations and shall be filed not later than May 23, 2003. This action is taken to permit additional comments from interested persons.

**DATES:** Comments must be received on or before May 23, 2003.

**ADDRESSES:** Send written comments to: National Office of the Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Dave Flick, (202) 693–0065.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 23, 2003 (Vol. 68, No. 78, Page 20032), the Department of Labor published a notice inviting the submission of pre-hearing statements to the Special Industry Committee for All Industries in American Samoa. Because of an unexpected delay in the release of the Economic Report, the Department will accept pre-hearing statements submitted by interested persons by May 23, 2003. If such statements are sent by airmail between American Samoa and the mainland, such filing shall be deemed timely if postmarked within the time provided. Interested persons are requested to submit comments on or before May 23, 2003.

Because of the continuing interest in this notice, the Department believes that it is desirable to extend the comment period for all interested persons. Therefore, the comment period for this notice pursuant to sections 5 and 6(a)(3) of the Fair Labor Standards Act (FLSA) of 1938, as amended (29 U.S.C. 205,

206(a)(3)), and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004) and 29 CFR part 511, (Wage Order Procedure for American Samoa), is extended to May 23, 2003.

Signed at Washington, DC, this 1st day of May, 2003.

**Eric S. Dreiband,**

*Deputy Administrator for Wage and Hour.*

[FR Doc. 03–11274 Filed 5–6–03; 8:45 am]

**BILLING CODE 4510–27–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 03–048]**

### NASA Advisory Committees; Renewal of NASA's Advisory Committee Charters

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of renewal and amendment of the Charters of NASA's Advisory Committees.

**SUMMARY:** Pursuant to sections 14(b)(1)and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration has determined that a renewal of eight Agency-established advisory committees is in the public interest in connection with the performance of duties imposed upon NASA by law. The structure and duties of these committees are unchanged; however, the charters have been amended to provide consistency.

The eight advisory committees are:

NASA Advisory Council
Aerospace Medicine and Occupational Health Advisory Committee
Aerospace Technology Advisory Committee
Biological and Physical Research Advisory Committee
Earth System Science and Applications Advisory Committee
Minority Business Resources Advisory Committee
Planetary Protection Advisory Committee
Space Science Advisory Committee

In addition, the Administrator has determined that renewal of the Aerospace Safety Advisory Panel is necessary and in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Ms. June Edwards, Code I, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2046.

**SUPPLEMENTARY INFORMATION:** Information regarding the NASA Advisory Council and its committees is available on the world wide web at: *http://www.hq.nasa.gov/office/codez/new/poladvisor.html.*

**June W. Edwards,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 03–11242 Filed 5–6–03; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 03–049]**

### Centennial of Flight Commission

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the U.S. Centennial of Flight Commission.

**DATES:** Tuesday, May 20, 2003, 1 p.m. to 4 p.m.

**ADDRESSES:** First Flight Centennial Pavilion, Wright Brothers Memorial, Kitty Hawk, NC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Beverly Farmarco, Code IC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Opening Remarks
- First Flight Centennial Federal Advisory Board
- North Carolina Status
- Ohio Status
- Air Force Status
- Rockefeller Center 2
- Canadian Centennial of Flight
- Carter Ryley Thomas
- Closing Comments

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Visitors will be requested to sign a visitor's register.

Due to limited availability of seating, members of the public will be admitted on a first-come, first-serve basis.

**June W. Edwards,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 03–11243 Filed 5–6–03; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting.

*Name and Committee Code:* Advisory Committee for Engineering (#1170).

*Date and Time:* May 29, 2003/8:30 a.m.–5 p.m.; May 30, 2003/8:30 a.m.–1 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Stafford I, Room 1235.

*Type of Meeting:* Open.

*Contact Person:* Dr. Elbert L. Marsh, Deputy Assistant Director for Engineering, National Science Foundation, Suite 505, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 292–4609. If you are attending the meeting and need access to the NSF building, please contact Maxine Byrd at 703–292–4601 or at *mbyrd@nsf.gov* so that your name can be added to the building access list.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

*Agenda:* The principal focus of the forthcoming meeting will be on strategic issues, both for the Directorate and the Foundation as a whole. The Committee will also address matters relating to the future of the engineering profession, and engineering education.

Dated: May 2, 2003.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 03–11333 Filed 5–6–03; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it

displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 140, ''Financial Protection Requirements and Indemnity Agreements.''

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities called for in sections 170 and 193 of the Atomic Energy Act of 1954, as amended (the Act).

5. *Who will be required or asked to report:* Licensees authorized to operate reactor facilities in accordance with 10 CFR part 50 and licensees authorized to construct and operate a uranium enrichment facility in accordance with 10 CFR parts 40 and 70.

6. *An estimate of the number of annual responses:* 156.

7. *The estimated number of annual respondents:* 91.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,382.

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* 10 CFR part 140 of the NRC's regulations specifies information to be submitted by licensees to enable the NRC to assess (a) the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to section 170 of the Atomic Energy Act of 1954, as amended, and (b) the liability insurance required of uranium enrichment facility licensees pursuant to section 193 of the Atomic Energy Act of 1954, as amended.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 6, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0039), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated in Rockville, Maryland, this 1st day of May, 2003.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 03–11305 Filed 5–6–03; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 30–35594–CivP, ASLBP No. 03–811–02–CivP, EA 02–072]**

## Atomic Safety and Licensing Board; Notice of Hearing

April 30, 2003.

*Before Administrative Judges:* Thomas S. Moore, Chairman, Dr. Charles N. Kelber, Dr. Peter S. Lam. In the Matter of Advanced Medical Imaging and Nuclear Services (Easton, Pennsylvania); Order Imposing Civil Monetary Penalty.

This proceeding involves a proposed civil penalty of $43,200 sought to be imposed by the Nuclear Regulatory Commission on Advanced Medical Imaging and Nuclear Services (Licensee), for alleged violations of provisions of its license and the Commission's regulations. In response to an Order Imposing a Civil Monetary Penalty, dated February 19, 2003 and published at 68 FR 10049 (Mar. 3, 2003), the Licensee on March 24, 2003 filed a timely request for an enforcement hearing. Thereafter, on April 8, 2003, this Atomic Safety and Licensing Board was established to preside over the hearing. *See* 68 FR 17969 (Apr. 14, 2003).

Notice is hereby given that by Order dated April 30, 2003, the Atomic Safety and Licensing Board has granted the request for a hearing submitted by the Licensee. This proceeding will be conducted under the Commission's hearing procedures set forth in 10 CFR part 2, subparts B and G. Parties to the proceeding are Advanced Medical Imaging and Nuclear Services and the NRC Staff. The issues to be considered, as set forth in the Order Imposing a Civil Monetary Penalty, are (a) whether the Licensee was in violation of the Commission's requirements as set forth in violations B and C of the written notice of violation and proposed imposition of civil penalty served upon the Licensee by letter dated October 22, 2002; and (b) whether, on the basis of such violations, and the additional violations set forth in the notice of violation that the Licensee admitted, the Order Imposing a Civil Monetary Penalty should be sustained.

Except to the extent an early settlement or other circumstance renders them unnecessary, the Licensing Board may, during the course of this proceeding, conduct one or more prehearing conferences and evidentiary hearing sessions. The time and place of these sessions will be announced in Licensing Board Orders.

For the Atomic Safety and Licensing Board.

Dated in Rockville, Maryland, on April 30, 2003.

**Thomas S. Moore,**

*Administrative Judge.*

[FR Doc. 03–11306 Filed 5–6–03; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. (as shown in Attachment 1); License Nos. (as shown in Attachment 1); EA–03–038]**

## All Operating Power Reactor Licensees; Order Modifying Licenses (Effective Immediately)

The licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing operation of nuclear power plants in accordance with the Atomic Energy Act of 1954 and Title 10 of the *Code of Federal Regulations* (10 CFR) part 50. Commission regulations at 10 CFR 50.54(p)(1) require these licensees to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements for reactors are contained in 10 CFR 73.55.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On February 25, 2002, the Commission issued Orders to the licensees of operating power reactors to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements which emerged from the NRC's ongoing comprehensive security review.

Work hour demands on nuclear facility security force personnel have increased substantially since the September 11, 2001 attacks and the current threat environment continues to require heightened security measures. The Commission has determined that the security measures addressed by the enclosed compensatory measures are required to be implemented by licensees as prudent measures to address issues that may arise from work-hour related fatigue of nuclear facility security force personnel. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected. These requirements will remain in effect until the Commission determines otherwise.

In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, the NRC finds that in the circumstances described above, the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to sections 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50 and 73, *It is hereby ordered, effective immediately, that all licenses identified in attachment 1 to this order are modified as follows:*

A. All Licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the Licensees' security plans. The Licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation no later than October 29, 2003.

B. 1. All Licensees shall, within thirty-five (35) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. Any Licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact safe operation of the facility must notify the Commission, within thirty-five (35) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. All Licensees shall, within thirty-five (35) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 2.

2. All Licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding the provisions of 10 CFR 50.54(p), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensees' responses to Conditions B.1, B.2, C.1, and C.2 above, shall be submitted in accordance with 10 CFR 50.4. In addition, Licensees' submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation may, by letter, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within thirty-five (35) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a

hearing, the provisions specified in Section III above shall be final thirty-five (35) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 29th day of April 2003.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

**Attachment 1**

**List of Addressees**

Michael R. Higgins, Superintendent of Plant Security, Arkansas Nuclear One, Units 1 & 2, Entergy Operations, Inc., Docket Nos. 50–313 & 50–368, License Nos. DPR–51 & NPF–6, 1448 S.R. 333, Russellville, AR 72802.

Mark Bezilla, Vice President, Beaver Valley Power Station, Units 1 & 2, FirstEnergy Nuclear Operating Company, Docket Nos. 50–334 & 50–412, License Nos. DPR–66 & NPF–73, Route 168, Shippingport, PA 15077–0004.

Gregory Baker, Braidwood Station, Units 1 & 2, Exelon Generation Company, LLC, Docket Nos. STN 50–456 & STN 50–457, License Nos. NPF–72 & NPF–77, 35100 S. Rt. 53, Suite 84, Braceville, IL 60407.

Ashok S. Bhatnagar, Site Vice President, Browns Ferry Nuclear Plant, Units 1, 2, & 3, Tennessee Valley Authority, Docket Nos. 50–259, 50–260 & 50–296, License Nos. DPR–33, DPR–52 & DPR–68, Intersection Limestone Country Roads 20 and 25, Athens, AL 35611.

Allen Brittain, Security Manager, Brunswick Steam Electric Plant, Units 1 & 2, Progress Energy, Docket Nos. 50–325 & 50–324, License Nos. DPR–71 & DPR–62, Hwy 87, 2.5 Miles North, Southport, NC 28461.

David Combs, Byron Station, Units 1 & 2, Exelon Generation Company, LLC, Docket Nos. STN 50–454 & STN 50–455, License Nos. NPF–37 & NPF–66, 4450 N. German Church Road, Byron, IL 61010.

J. Mark Dunbar, Security Manager, Callaway Plant, Unit 1, Ameren Union Electric Company, Docket No. STN 50–483, License No. NPF–30, Highway CC, (5 Miles North of Highway 94) Portland, MO 65067.

Vince Williams, Security Programs Specialist, Calvert Cliffs Nuclear Power Plant, Units 1 & 2, Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 & 50–318, License Nos. DPR–53 & DPR–69, 1650 Calvert Cliffs Parkway, Lusby, MD 20657.

G. R. Peterson, Vice President Catawba Site, Catawba Nuclear Station, Units 1 & 2, Duke Power Company, Docket Nos. 50–413 & 50–414, License Nos. NPF–35 & NPF–52, 4800 Concord Road, York, SC 29745.

Ed Wrigley, Security Manager, Clinton Power Station, AmerGen Energy Company, LLC, Docket No. 50–461, License No. NPF–62, Route 54 East, Clinton, IL 61727.

J. V. Parrish, Chief Executive Officer, Columbia Generating Station, Energy Northwest, Docket No. 50–397, License No. NPF–21, Snake River Warehouse, North Power Plant Loop, Richland, WA 99352.

Neil Harris, Comanche Peak Steam Electric Station, Units 1 & 2, TXU Electric & Gas, Docket No. 50–445 & 50–446, License Nos. NPF–87 & NPF–89, FM 56, 5 Miles North of Glen Rose, Glen Rose, TX 76043.

Martin Faulkner, Security Manager, Cooper Nuclear Station, Nebraska Public Power District, Docket No. 50–298, License No. DPR–046, 1200 Prospect Road, Brownville, NE 68321–0098.

Marty Folding, Security Manager, Crystal River Nuclear Generating Plant, Unit 3, Progress Energy, Docket No. 50–302, License No. DPR–72, Crystal River Energy Complex, 15760 West Power Line Street (NAID), Crystal River, FL 34428–6708.

William Mugge, Security Manager, Davis-Besse Nuclear Power Station, FirstEnergy Nuclear Operating Company, Docket No. 50–346, License No. NPF–3, 5501 N. State, Route 2, Oak Harbor, OH 43449.

Ron Todaro, Security Director, Diablo Canyon Nuclear Power Plant, Units 1 & 2, Pacific Gas & Electric Company, Docket Nos. 50–275 & 50–323, License Nos. DPR–80 & DPR–82, 9 Miles Northwest of Avila Beach, Avila Beach, CA 93424.

Garland Gibson, Manager, Site Protective Services, Donald C. Cook Nuclear Plant, Units 1& 2, American Electric Power, Docket Nos. 50–315 & 50–316, License Nos. DPR–58 & DPR–74, 1 Cook Place, Bridgman, MI 49106.

Valheria Gengler, Dresden Nuclear Power Station, Units 2 & 3, Exelon Generation Company, Docket Nos. 50–237 & 50–249, License Nos. DPR–19 & DPR–25, 6500 North Dresden Road, Morris, IL 60450–9765.

Ben Kindred, Security Manager, Duane Arnold Energy Center, Nuclear Management Co., Docket No. 50–331, License No. DPR–49, 3277 DAEC Road, Palo, Iowa 52324.

John R. Thompson, Security Manager, Edwin I. Hatch Nuclear Plant, Unit 1 & 2, Southern Nuclear Operating Company, Inc., Docket Nos. 50–321 & 50–366, License Nos. DPR–57 & NPF–5, Plant E. I. Hatch, U.S. Hwy #1 North, Baxley, GA 31515–2010.

Joe Korte, Nuclear Security Manager, Fermi, Unit 2, Detroit Edison Company, Docket No. 50–341, License No. NPF–43, 6400 N. Dixie Highway, Newport, MI 48166.

John Sefick, Manager, Security & Emergency Planning, Fort Calhoun Station, Omaha Public Power District, Docket No. 50–285, License No. DPR–40, 9750 Power Lane, Blair, NE 68008.

Greg D. Brown, Grand Gulf Nuclear Station, Unit 1, Entergy Operations, Inc., Docket No. 50–416, License No. NPF–29, Bald Hill Road—Waterloo Road, Port Gibson, MS 39150.

Scott Young, Security Superintendent, H.B. Robinson Steam Electric Plant, Unit 2, Carolina Power & Light Company, Docket No. 50–261, License No. DPR–23, 3581 West Entrance Road, Hartsville, SC 29550.

David Thompson, Security Manager, Indian Point Nuclear Generating Station, Units 2 & 3, Entergy Nuclear Operations, Inc., Docket Nos. 50–247 & 50–286, License Nos. DPR–26 & DPR–64, Mail Stop K-IP2–4331, 295 Broadway Suite 1, Buchanan, NY 10511.

J. Haley, Security Manager, James A FitzPatrick Nuclear Power Plant, Entergy Nuclear Operations, Inc., Docket No. 50–333, License No. DPR–59, 268 Lake Road, Lycoming, NY 13093.

Ken Dyer, Site Security Manager, Joseph M. Farley Nuclear Plant, Units 1 & 2, Southern Nuclear Operating Co., Docket Nos. 50–348 & 50–364, License No. NPF–2 & NPF–8, 7388 North Sate Highway 95, Columbia, AL 36319–4120.

Mark Fencl, Security Manager, Kewaunee Nuclear Power Plant, Nuclear Management Co., Docket No. 50–305, License No. DPR–43, N 490 Highway 42, Kewaunee, WI 54216–9510.

Cindy Wilson, LaSalle County Station, Units 1 & 2, Exelon Generation Company, Docket No. 50–373 & 50–374, License Nos. NPF–11 & NPF–18, 2601 North 21st Road, Marseilles, IL 61341–9757.

Peter R. Supplee, Limerick Generating Station, Units 1 & 2, Exelon Generation Company, LLC, Docket No. 50–352 & 50–353, License Nos. NPF–39 & NPF–85, Evergreen & Sanatoga Road, TSC 1–2, Sanatoga, PA 19464.

J. Alan Price, Site Vice President, c/o Mr. David W. Dodson, Millstone Power Station, Units 2 & 3, Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 & 50–423, License Nos. DPR–65 & NPF–49, Rope Ferry Road, Waterford, CT 06385.

Brian B. Linde, Security Manager, Monticello Nuclear Generating Plant, Nuclear Management Company, Docket No. 50–263, License No. DPR–22, 2807 W. Highway 75, Monticello, MN 55362.

Mr. John T. Conway, Site Vice President, Nine Mile Point Nuclear Station, Units 1 & 2, Nine Mile Point Nuclear Station, LLC, Docket Nos. 50–220 & 50–410, License Nos. DPR–63 & NPF–69, 348 Lake Road, Oswego, NY 13126.

Tim Maddy, Manager, Station Nuclear Security, North Anna Power Station, Units 1 & 2, Virginia Electric & Power Company, Docket Nos. 50–338 & 50–339, License Nos. NPF–4 & NPF–7, 1022 Haley Drive, Mineral, Virginia 23117.

Terry King, Security Manager, Oconee Nuclear Station, Units 1, 2, & 3, Duke Energy Corporation, Docket Nos. 50–269, 50–270 & 50–287, License Nos. DPR–38, DPR–47 & DPR–55, 7800 Rochester Highway, Seneca, SC 29672.

Rick Ewart, Security Manager, Oyster Creek Nuclear Generating Station, AmerGen Energy Company, LLC, Docket No. 50–219, License No. DPR–16, Route 9 South, Forked River, NJ 08731.

Douglas Cooper, Site Vice President, Palisades Plant, Nuclear Management Company, Docket No. 50–255, License No. DPR–20, 27780 Blue Star, Memorial Highway, Covert, MI 49043.

Michael W. Priebe, Dept. Leader—Security Operations, Palo Verde Nuclear Generating, Units 1, 2 & 3, Arizona Public

Service Company, Docket Nos. STN 50–528, 50–529 & STN 50–530, License Nos. NPF–41, NPF–51 & NPF–74, 5801 S. Wintersburg Road, Tonapah, Arizona 85354–7529.

Wayne Trump, Manager—Site Security, Peach Bottom Atomic Power Station, Units 2 & 3, Exelon Generation Company, LLC, Docket Nos. 50–277 & 50–278, License Nos. DPR–44 & DPR–56, 1848 Lay Road, Delta, PA 17314.

Thomas Mahon, Security Manager, Perry Nuclear Power, Unit 1, FirstEnergy Nuclear Operating Company, Docket No. 50–440, License No. NPF–58, 10 North Center Street, Perry, OH 44081.

Michael Bellamy, Senior Vice President, Pilgrim Nuclear Power Station, Unit 1, Entergy Nuclear Generation Company, Docket No. 50–293, License No. DPR–35, Rocky Hill Road, Plymouth, MA 02360.

Mark Fencl, Security Manager, Point Beach Nuclear Plant, Units 1 & 2, Nuclear Management Company, Docket Nos. 50–266 & 50–301, License Nos. DPR–24 & DPR–27, 610 Nuclear Road, Two Rivers, WI 54241.

John Waddell, Security Manager, Prairie Island, Units 1 & 2, Nuclear Management Company, Docket No. 50–282 & 50–306, License No. DPR–42 & DPR–60, 1717 Wakonade Drive East, Welch, MN 55089.

Tim Tulon, Site Vice President, Quad Cities Nuclear Power Station, Units 1 & 2, Exelon Generation Company, Docket Nos. 50–254 & 50–265, License Nos. DPR–29 & DPR–30, 22710–206th Ave., North, Cordova, IL 61242.

Ronald C. Teed, Site Security Supervisor, R. E. Ginna Nuclear Power Plant, Rochester Gas & Electric Corporation, Docket No. 50–244, License No. DPR–18, 1503 Lake Road, Ontario, NY 14519.

Andre James, Security Manager, River Bend Station, Entergy Operations, Inc., Docket No. 50–458, License No. NPF–47, 5485 U.S. Highway 61, St. Francisville, LA 70775.

Ted Straub, Manager of Nuclear Security & Fire, Security Center, Salem Nuclear Generating Station, Units 1 & 2, Docket Nos. 50–272 & 50–311, License No. DPR–70 & DPR–75, Hope Creek Generating Station, Unit 1, Docket No. 50–354, License No. NPF–57, PSEG Nuclear LLC, End of Buttonwood Road, Hancocks Bridge, NJ 08038.

John Todd, Manager, Site Security, San Onofre Nuclear Station, Units 2 & 3, Southern California Edison, Docket Nos. 50–361 & 50–362, License Nos. NPF–10 & NPF–15, 5000 Pacific Coast Highway (A82), San Clemente, CA 92674.

James Pandolfo, Security Manager, Seabrook Station, Unit 1, FPL Energy Seabrook, LLC, Docket No. 50–443, License No. NPF–86, Central Receiving, Lafayette Road, Seabrook, NH 03874.

Kenneth Stevens, Security Manager, Sequoyah Nuclear Plant, Units 1 & 2 (OPS5N), Tennessee Valley Authority (TVA), Docket Nos. 50–327 & 50–328, License Nos. DPR–77 & DPR–79, Sequoyah Road, Soddy Daisy, TN 37384.

Denny Braund, Shearon Harris Nuclear Power Plant, Unit 1, Carolina Power & Light Company, Docket No. 50–400, License No. NPF–63, 5413 Shearon Harris Road, New Hill, NC 27562.

William T. Cottle, President & Chief Executive Officer, South Texas Project Electric Generating Company, Units 1 & 2, STP Nuclear Operating Company, Docket Nos. 50–498 & 50–499, License Nos. NPF–76 & NPF–80, 8 Miles West of Wadsworth, on FM 521, Wadsworth, TX 77483.

Gary L. Varnes, Site Security Manager, St. Lucie Nuclear Plant, Units 1 & 2, Florida Power & Light Company, Docket Nos. 50–335 & 50–389, License Nos. DPR–67 & NPF–16, 6351 South Ocean Drive, Jensen Beach, FL 34957.

Curtis Luffman, Surry Power Station, Units 1 & 2, Virginia Electric & Power Company, Docket Nos. 50–280 & 50–281, License Nos. DPR–32 & DPR–37, 5570 Hog Island Road, Surry, VA 23883–0315.

Roland Ferentz, Manager, Nuclear Security, Susquehanna Steam Electric Station, Units 1&2, Pennsylvania Power and Light Company, Docket Nos. 50–387 & 50–388, License Nos. NPF–14 & NPF–22, 769 Salem Blvd., Berwick, PA 18603.

Michael Bruecks, Three Mile Island Nuclear Station, Unit 1, Amergen Energy Company, LLC, Docket No. 50–289, License No. DPR–50, Route 441 South, Middletown, PA 17057.

William S. Johns, Site Security Supervisor, Turkey Point Nuclear Generating Station, Units 3 & 4, Florida Power & Light Company, Docket Nos. 50–250 & 50–251, License Nos. DPR–31 & DPR–41, 9760 SW 344th Street, Florida City, FL 33035.

Mr. Jay K. Thayer, Site Vice President, Vermont Yankee Nuclear Power Station, Entergy Nuclear Vermont Yankee, LLC, Docket No. 50–271, License No. DPR–28, 185 Old Ferry Road, Brattleboro, VT 05302–0500.

Stephen A. Byrne, Senior Vice President—Nuclear Operations, Virgil C. Summer Nuclear Station, South Carolina Electric & Gas Company, Docket No. 50–395, License No. NPF–12, Hwy 215 N at Bradham Blvd., Jenkinsville, SC 29065.

Doug G. Huyck, Security Manager, Vogtle Electric Generating Plant, Unit 1 & 2, Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 & 50–425, License Nos. NPF–68 & NPF–81, 7821 River Road, Waynesboro, GA 30830.

Joseph E. Venable, Vice President, Operations, Waterford Steam Electric Generating Station, Unit 3, Entergy Operations, Inc., Docket No. 50–382, License No. NPF–38, 17265 River Road, Killona, LA 70066–0751.

Bonnie A. Schnetzler, Security Manager, Watts Bar Nuclear Plant, Unit 1, Tennessee Valley Authority, Docket No. 50–390, License No. NPF–90, Highway 68 Near Spring City, Spring City, TN 37381.

William A. Evans, William B. McGuire Nuclear Station, Units 1 & 2, Duke Energy Corporation, Docket Nos. 50–369 & 50–370, License Nos. NPF–9 & NPF–17, Mail–MG01SC, 12700 Hagers Ferry Road, Huntersville, NC 28078.

David Erbe, Security Manager, Wolf Creek Generating Station, Unit 1, Wolf Creek Nuclear Operating Corporation, Docket No. STN 50–482, License No. NPF–42, 1550 Oten Lane, NE, Burlington, KS 66839.

## Attachment 2

### Compensatory Measures

*A. Background*

These compensatory measures (CMs) are established to delineate licensee responsibility in response to the threat environment presently in existence in the aftermath of the events of September 11, 2001. Excessive work schedules can challenge the ability of security force personnel to remain vigilant and effectively perform their duties.

*B. Scope*

Operating nuclear power reactor licensees shall comply with the following CMs to ensure, in part, that nuclear facility security force personnel are not assigned to duty while in a fatigued condition that could reduce their alertness or ability to perform functions necessary to identify and promptly respond to plant security threats. Work hour controls shall apply to personnel performing the following functions: armed member of the security force, central alarm station operator, secondary alarm station operator, security shift supervisor, and watchperson (*i.e.*, watchman).

*C. Compensatory Measures*

1. Individual Work Hour Controls

(a) Personnel performing the functions identified in B:

(1) Shall not exceed the following limits, excluding shift turnover time:

(i) 16 hours in any 24-hour period,

(ii) 26 hours in any 48-hour period, and

(iii) 72 hours in any 7-day period.

(2) Shall have a minimum 10-hour break between work periods. The participation in turnover is permitted during the break period.

(3) May be authorized, by the licensee, to deviate from the limits specified in C.1(a)(1) and/or C.1(a)(2) provided:

(i) The licensee could not have reasonably foreseen or controlled the circumstance necessitating the deviation,

(ii) The security shift supervisor has determined that the deviation is required to maintain the security for the facility,

(iii) An evaluation is performed, in advance, by individuals with training, as provided by the licensee, in the symptoms, contributing factors, and effects of fatigue that determined that the individual's fitness for duty would not be adversely affected by the additional work period to be authorized under the deviation, and

(iv) The basis and approval for C.1(a)(3) items (i), (ii), and (iii) are documented.

**Note 1:** An 8-hour break may be authorized as deviation from the 10-hour requirement of C.1(a)(2) if the deviation is required for a scheduled transition of crews between work schedules or shifts.

(b) The number and duration of approved deviations shall be reviewed by the Security Manager and limited to the extent practicable.

(c) The licensee shall monitor and control individual work hours to ensure that

excessive work hours are not compromising worker alertness and performance.

2. Group Work Hour Controls

Group average work hours for personnel performing the functions identified in B shall be controlled in accordance with the following limits:

(a) Normal Plant Conditions: The average number of hours actually worked by personnel performing the functions identified in B, shall not exceed 48 hours per week averaged over consecutive periods not to exceed six (6) weeks. Workers who did not work at least 75 percent of the normally scheduled hours during the averaging period shall not be included when calculating the average. If the group average limit is exceeded, the licensee shall take prompt action to reduce the average hours worked in accordance with this compensatory measure and take actions to prevent recurrence.

(b) Planned Plant or Planned Security System Outages:

(1) The average number of hours actually worked by personnel performing the functions identified in B, shall not exceed 60 hours per week averaged over consecutive periods not to exceed six (6) weeks. For planned abnormal plant conditions whose duration is less then the averaging period the limit would be 60 hours per week averaged over the duration of the condition. Workers who did not work at least 75 percent of the normally scheduled hours during the averaging period shall not be included when calculating the average. If the group average limit is exceeded, the licensee shall take prompt action to reduce the average hours worked in accordance with this compensatory measure and take actions to prevent recurrence.

**Note 2:** Licensee may define the beginning of a planned plant outage to be up to 3 weeks prior to the plant shutdown (*i.e.*, plant operational mode not equal to 1).

(2) The limit defined in C.2(b)(1) can be used for up to 90 days. For periods greater than 90 days, the licensee shall take prompt action to limit hours worked in accordance with the requirements of C.2(a). The use of the limits defined in C.2(b)(1) shall not exceed 120 days.

(c) Unplanned Plant or Unplanned Security Outages or An Increase in Plant Threat Condition (*i.e.*, increase in protective measure level as promulgated by NRC Advisory):

(1) There are no specific group limits for this condition.

(2) For periods greater than 90 days, the licensee shall take prompt action to limit hours worked in accordance with the requirements of C.2(a). The use of the allowance defined in C.2(c)(1) shall not exceed 120 days.

**Note 3:** For the purposes of these CMs, the baseline threat condition is defined as the least significant threat condition in effect in the last 120 days.

**Note 4:** If an increase in threat condition occurs while the plant is in a planned outage, the requirements of C.2(c) apply for the increased threat condition. If the threat condition returns to the baseline threat condition during the planned outage, the requirements of C.2(b) apply using the original licensee defined start date for the planned outage.

**Note 5:** If multiple increases in threat condition occur while the conditions of C.2(c) are in effect, the requirements of C.2(c)(2) reset with each increase.

**Note 6:** If the threat condition decreases, the new threat condition shall be compared to the baseline to determine if the requirements of C.2(c) apply as a result of an increased threat condition. If so, C.2(c)(2) shall be referenced to the date when the current threat condition was last entered as the result of an increase.

**Note 7:** Licensees shall reference changes in threat condition prior to the issuance of these CMs to determine the baseline threat condition and whether the requirements of C.2(c) apply.

3. Licensees Shall be Exempt from the Requirements of C.1 and C.2 During Declared Emergencies as Defined in the Licensee's Emergency Plan

4. Procedures

Develop or augment procedures, as necessary, for personnel within the scope of this CM to:

(a) Describe the process for implementing the controls for hours worked specified in C.1, C.2, and C.3 of this CM.

(b) Describe the process to be followed if an individual reports prior to or during a duty period that he or she considers himself or herself unfit for duty due to fatigue.

(c) Document self-declarations of unfit for duty due to fatigue if upon completion of the licensee's evaluation it is determined the individual should be returned to work without a break of at least 10 hours.

[FR Doc. 03–11300 Filed 5–6–03; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. (as shown in Attachment 1); License Nos. (as shown in Attachment 1); EA–03–039]**

## All Operating Power Reactor Licensees; Order Modifying Licenses (Effective Immediately)

The licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing operation of nuclear power plants in accordance with the Atomic Energy Act of 1954 (the Act) and Title 10 of the *Code of Federal Regulations* (10 CFR) part 50. Commission regulations at 10 CFR 50.54(p)(1) require these licensees to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements for reactors are contained in 10 CFR 73.55.

On September 11, 2001, terrorists simultaneously attacked targets in New York City, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On February 25, 2002, the Commission issued Orders to the licensees of operating power reactors to put the actions taken in response to the advisories in the established regulatory framework and to implement additional security enhancements which emerged from the NRC's ongoing comprehensive security review.

The Commission has determined that tactical proficiency and physical fitness requirements governing the licensee's armed security force personnel must be enhanced. Therefore, the Commission has determined that certain compensatory measures (CMs) are required to be implemented by licensees as prudent measures to improve tactical and firearms proficiency and physical fitness of the security forces at nuclear power reactor facilities. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order,[1] on all licensees of these facilities. Pursuant to Section 147 of the Act, the Commission is broadening the scope of information protected under 10 CFR section 73.21(b)(1), and has designated the information in Attachment 2 as Safeguards Information (SGI). The Commission requires that the Safeguards Information be protected and that access to Safeguards Information be limited in accordance with 10 CFR section 73.21. Pursuant to section 147a of the Act, any person, ''whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act.'' Furthermore, willful violations of any regulation or order governing Safeguards Information is a felony subject to criminal penalties in the form of fines or imprisonment, or both. (See sections 147b and 223 of the Act.) The requirements in Attachment 2, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and

[1] Attachment 2 contains Safeguards Information. Therefore, Attachment 2 will not be released to the public.

common defense and security continue to be adequately protected. These requirements will remain in effect until the Commission determines otherwise.

Licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. Additionally, some measures may need to be tailored to the specific circumstances at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

In order to provide assurance that licensees are implementing the CMs to achieve a consistent level of protection, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

Accordingly, pursuant to sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Act, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR parts 50 and 73, *it is hereby ordered, effective immediately, that all licenses identified in attachment 1 to this order are modified as follows:*

A. 1. All Licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan and the security training and qualification plan.

2. The Licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation, fully training and qualifying all armed security force personnel on the new requirements no later than October 29, 2004.

B. 1. All Licensees shall, within thirty-five (35) days of the date of this Order, notify the Commission (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensee's justification for seeking relief from, or variation of, any specific requirement.

2. Any Licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact safe operation of the facility must notify the Commission, within thirty-five (35) days of the date of this Order, of the adverse safety impact and provide the basis for the Licensee's determination that the requirement has an adverse safety impact and provide either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. All Licensees shall, within thirty-five (35) days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.

2. All Licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding the provisions of 10 CFR 50.54(p), all measures implemented, or actions taken, in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B.1, B.2, C.1, and C.2 above shall be submitted in accordance with 10 CFR 50.4. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within thirty-five (35) days of the date of this Order, and they may also request a hearing on this Order, within thirty-five (35) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the Licensee if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to U.S. Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), in addition to requesting a hearing, the Licensee may, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final thirty-five (35) days from the date of this Order without further order or proceedings. If

an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 29th day of April 2003.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

**Attachment 1**

**List of Addressees**

Michael R. Higgins, Superintendent of Plant Security, Arkansas Nuclear One, Units 1 & 2, Entergy Operations, Inc., Docket Nos. 50–313 & 50–368, License Nos. DPR–51 & NPF–6, 1448 S.R. 333, Russellville, AR 72802.

Mark Bezilla, Vice President, Beaver Valley Power Station, Units 1 & 2, FirstEnergy Nuclear Operating Company, Docket Nos. 50–334 & 50–412, License Nos. DPR–66 & NPF–73, Route 168, Shippingport, PA 15077–0004.

Gregory Baker, Braidwood Station, Units 1 & 2, Exelon Generation Company, LLC, Docket Nos. STN 50–456 & STN 50–457, License Nos. NPF–72 & NPF–77, 35100 S. Rt. 53, Suite 84, Braceville, IL 60407.

Ashok S. Bhatnagar, Site Vice President, Browns Ferry Nuclear Plant, Units 1, 2, & 3, Tennessee Valley Authority, Docket Nos. 50–259, 50–260 & 50–296, License Nos. DPR–33, DPR–52 & DPR–68, Intersection Limestone Country Roads 20 and 25, Athens, AL 35611.

Allen Brittain, Security Manager, Brunswick Steam Electric Plant, Units 1 & 2, Progress Energy, Docket Nos. 50–325 & 50–324, License Nos. DPR–71 & DPR–62, Hwy 87, 2.5 Miles North, Southport, NC 28461.

David Combs, Byron Station, Units 1 & 2, Exelon Generation Company, LLC, Docket Nos. STN 50–454 & STN 50–455, License Nos. NPF–37 & NPF–66, 4450 N. German Church Road, Byron, IL 61010.

J. Mark Dunbar, Security Manager, Callaway Plant, Unit 1, Ameren Union Electric Company, Docket No. STN 50–483, License No. NPF–30, Highway CC (5 Miles North of Highway 94), Portland, MO 65067.

Vince Williams, Security Programs Specialist, Calvert Cliffs Nuclear Power Plant, Units 1 & 2, Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 & 50–318, License Nos. DPR–53 & DPR–69, 1650 Calvert Cliffs Parkway, Lusby, MD 20657.

G.R. Peterson, Vice President Catawba Site, Catawba Nuclear Station, Units 1 & 2, Duke Power Company, Docket Nos. 50–413 & 50–414, License Nos. NPF–35 & NPF–52, 4800 Concord Road, York, SC 29745.

Ed Wrigley, Security Manager, Clinton Power Station, AmerGen Energy Company, LLC, Docket No. 50–461, License No. NPF–62, Route 54 East, Clinton, IL 61727.

J.V. Parrish, Chief Executive Officer, Columbia Generating Station, Energy Northwest, Docket No. 50–397, License No. NPF–21, Snake River Warehouse, North Power Plant Loop, Richland, WA 99352.

Neil Harris, Comanche Peak Steam Electric Station, Units 1 & 2, TXU Electric & Gas, Docket No. 50–445 & 50–446, License Nos. NPF–87 & NPF–89, FM 56, 5 Miles North of Glen Rose, Glen Rose, TX 76043.

Martin Faulkner, Security Manager, Cooper Nuclear Station, Nebraska Public Power District, Docket No. 50–298, License No. DPR–046, 1200 Prospect Road, Brownville, NE 68321–0098.

Marty Folding, Security Manager, Crystal River Nuclear Generating Plant, Unit 3, Progress Energy, Docket No. 50–302, License No. DPR–72, Crystal River Energy Complex, 15760 West Power Line Street (NAID), Crystal River, FL 34428–6708.

William Mugge, Security Manager, Davis-Besse Nuclear Power Station, FirstEnergy Nuclear Operating Company, Docket No. 50–346, License No. NPF–3, 5501 N. State, Route 2, Oak Harbor, OH 43449.

Ron Todaro, Security Director, Diablo Canyon Nuclear Power Plant, Units 1 & 2, Pacific Gas & Electric Company, Docket Nos. 50–275 & 50–323, License Nos. DPR–80 & DPR–82, 9 Miles Northwest of Avila Beach, Avila Beach, CA 93424.

Garland Gibson, Manager, Site Protective Services, Donald C. Cook Nuclear Plant, Units 1& 2, American Electric Power, Docket Nos. 50–315 & 50–316, License Nos. DPR–58 & DPR–74, 1 Cook Place, Bridgman, MI 49106.

Valheria Gengler, Dresden Nuclear Power Station, Units 2 & 3, Exelon Generation Company, Docket Nos. 50–237 & 50–249, License Nos. DPR–19 & DPR–25, 6500 North Dresden Road, Morris, IL 60450–9765.

Ben Kindred, Security Manager, Duane Arnold Energy Center, Nuclear Management Co., Docket No. 50–331, License No. DPR–49, 3277 DAEC Road, Palo, Iowa 52324.

John R. Thompson, Security Manager, Edwin I. Hatch Nuclear Plant, Unit 1 & 2, Southern Nuclear Operating Company, Inc., Docket Nos. 50–321 & 50–366, License Nos. DPR–57 & NPF–5, Plant E. I. Hatch, U.S. Hwy #1 North, Baxley, GA 31515–2010.

Joe Korte, Nuclear Security Manager, Fermi, Unit 2, Detroit Edison Company, Docket No. 50–341, License No. NPF–43, 6400 N. Dixie Highway, Newport, MI 48166.

John Sefick, Manager, Security & Emergency Planning, Fort Calhoun Station, Omaha Public Power District, Docket No. 50–285, License No. DPR–40, 9750 Power Lane, Blair, NE 68008.

Greg D. Brown, Grand Gulf Nuclear Station, Unit 1, Entergy Operations, Inc., Docket No. 50–416, License No. NPF–29, Bald Hill Road—Waterloo Road, Port Gibson, MS 39150.

Scott Young, Security Superintendent, H.B. Robinson Steam Electric Plant, Unit 2, Carolina Power & Light Company, Docket No. 50–261, License No. DPR–23, 3581 West Entrance Road, Hartsville, SC 29550.

David Thompson, Security Manager, Indian Point Nuclear Generating Station, Units 2 & 3, Entergy Nuclear Operations, Inc., Docket Nos. 50–247 & 50–286, License Nos. DPR–26 & DPR–64, Mail Stop K-IP2–4331, 295 Broadway Suite 1, Buchanan, NY 10511.

J. Haley, Security Manager, James A FitzPatrick Nuclear Power Plant, Entergy Nuclear Operations, Inc., Docket No. 50–333, License No. DPR–59, 268 Lake Road, Lycoming, NY 13093.

Ken Dyer, Site Security Manager, Joseph M. Farley Nuclear Plant, Units 1 & 2, Southern Nuclear Operating Co., Docket Nos. 50–348 & 50–364, License No. NPF–2 & NPF–8, 7388 North Sate Highway 95, Columbia, AL 36319–4120.

Mark Fencl, Security Manager, Kewaunee Nuclear Power Plant, Nuclear Management Co., Docket No. 50–305, License No. DPR–43, N 490 Highway 42, Kewaunee, WI 54216–9510.

Cindy Wilson, LaSalle County Station, Units 1 & 2, Exelon Generation Company, Docket No. 50–373 & 50–374, License Nos. NPF–11 & NPF–18, 2601 North 21st Road, Marseilles, IL 61341–9757.

Peter R. Supplee, Limerick Generating Station, Units 1 & 2, Exelon Generation Company, LLC, Docket No. 50–352 & 50–353, License Nos. NPF–39 & NPF–85, Evergreen & Sanatoga Road, TSC 1–2, Sanatoga, PA 19464.

J. Alan Price, Site Vice President, c/o Mr. David W. Dodson, Millstone Power Station, Units 2 & 3, Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 & 50–423, License Nos. DPR–65 & NPF–49, Rope Ferry Road, Waterford, CT 06385.

Brian B. Linde, Security Manager, Monticello Nuclear Generating Plant, Nuclear Management Company, Docket No. 50–263, License No. DPR–22, 2807 W. Highway 75, Monticello, MN 55362.

Mr. John T. Conway, Site Vice President, Nine Mile Point Nuclear Station, Units 1 & 2, Nine Mile Point Nuclear Station, LLC, Docket Nos. 50–220 & 50–410, License Nos. DPR–63 & NPF–69, 348 Lake Road, Oswego, NY 13126.

Tim Maddy, Manager, Station Nuclear Security, North Anna Power Station, Units 1 & 2, Virginia Electric & Power Company, Docket Nos. 50–338 & 50–339, License Nos. NPF–4 & NPF–7, 1022 Haley Drive, Mineral, Virginia 23117.

Terry King, Security Manger, Oconee Nuclear Station, Units 1, 2, & 3, Duke Energy Corporation, Docket Nos. 50–269, 50–270 & 50–287, License Nos. DPR–38, DPR–47 & DPR–55, 7800 Rochester Highway, Seneca, SC 29672.

Rick Ewart, Security Manager, Oyster Creek Nuclear Generating Station, AmerGen Energy Company, LLC, Docket No. 50–219, License No. DPR–16, Route 9 South, Forked River, NJ 08731.

Douglas Cooper, Site Vice President, Palisades Plant, Nuclear Management Company, Docket No. 50–255, License No. DPR–20, 27780 Blue Star, Memorial Highway, Covert, MI 49043.

Michael W. Priebe, Dept. Leader-Security Operations, Palo Verde Nuclear Generating, Units 1, 2 & 3, Arizona Public Service Company, Docket Nos. STN 50–528, 50–529 & STN 50–530, License Nos. NPF–41, NPF–51 & NPF–74, 5801 S.

Wintersburg Road, Tonapah, Arizona 85354–7529.
Wayne Trump, Manager—Site Security, Peach Bottom Atomic Power Station, Units 2 & 3, Exelon Generation Company, LLC, Docket Nos. 50–277 & 50–278, License Nos. DPR–44 & DPR–56, 1848 Lay Road, Delta, PA 17314.
Thomas Mahon, Security Manager, Perry Nuclear Power, Unit 1, FirstEnergy Nuclear Operating Company, Docket No. 50–440, License No. NPF–58, 10 North Center Street, Perry, OH 44081.
Michael Bellamy, Senior Vice President, Pilgrim Nuclear Power Station, Unit 1, Entergy Nuclear Generation Company, Docket No. 50–293, License No. DPR–35, Rocky Hill Road, Plymouth, MA 02360.
Mark Fencl, Security Manager, Point Beach Nuclear Plant, Units 1 & 2, Nuclear Management Company, Docket Nos. 50–266 & 50–301, License Nos. DPR–24 & DPR–27, 610 Nuclear Road, Two Rivers, WI 54241.
John Waddell, Security Manager, Prairie Island, Units 1 & 2, Nuclear Management Company, Docket No. 50–282 & 50–306, License No. DPR–42 & DPR–60, 1717 Wakonade Drive East, Welch, MN 55089.
Tim Tulon, Site Vice President, Quad Cities Nuclear Power Station, Units 1 & 2, Exelon Generation Company, Docket Nos. 50–254 & 50–265, License Nos. DPR–29 & DPR–30, 22710—206th Ave., North, Cordova, IL 61242.
Ronald C. Teed, Site Security Supervisor, R. E. Ginna Nuclear Power Plant, Rochester Gas & Electric Corporation, Docket No. 50–244, License No. DPR–18, 1503 Lake Road, Ontario, NY 14519.
Andre James, Security Manager, River Bend Station, Entergy Operations, Inc., Docket No. 50–458, License No. NPF–47, 5485 U.S. Highway 61, St. Francisville, LA 70775.
Ted Straub, Manager of Nuclear Security & Fire, Security Center, Salem Nuclear Generating Station, Units 1 & 2, Docket Nos. 50–272 & 50–311, License No. DPR–70 & DPR–75, Hope Creek Generating Station, Unit 1, Docket No. 50–354, License No. NPF–57, PSEG Nuclear LLC, End of Buttonwood Road, Hancocks Bridge, NJ 08038.
John Todd, Manager, Site Security, San Onofre Nuclear Station, Units 2 & 3, Southern California Edison, Docket Nos. 50–361 & 50–362, License Nos. NPF–10 & NPF–15, 5000 Pacific Coast Highway (A82), San Clemente, CA 92674.
James Pandolfo, Security Manager, Seabrook Station, Unit 1, FPL Energy Seabrook, LLC, Docket No. 50–443, License No. NPF–86, Central Receiving, Lafayette Road, Seabrook, NH 03874.
Kenneth Stevens, Security Manager, Sequoyah Nuclear Plant, Units 1 & 2, (OPS5N), Tennessee Valley Authority (TVA), Docket Nos. 50–327 & 50–328, License Nos. DPR–77 & DPR–79, Sequoyah Road, Soddy Daisy, TN 37384.
Denny Braund, Shearon Harris Nuclear Power Plant, Unit 1, Carolina Power & Light Company, Docket No. 50–400, License No. NPF–63, 5413 Shearon Harris Road, New Hill, NC 27562.
William T. Cottle, President & Chief Executive Officer, South Texas Project Electric Generating, Company, Units 1 & 2, STP Nuclear Operating Company, Docket Nos. 50–498 & 50–499, License Nos. NPF–76 & NPF–80, 8 Miles West of Wadsworth, on FM 521, Wadsworth, TX 77483.
Gary L. Varnes, Site Security Manager, St. Lucie Nuclear Plant, Units 1 & 2, Florida Power & Light Company, Docket Nos. 50–335 & 50–389, License Nos. DPR–67 & NPF–16, 6351 South Ocean Drive, Jensen Beach, FL 34957.
Curtis Luffman, Surry Power Station, Units 1 & 2, Virginia Electric & Power Company, Docket Nos. 50–280 & 50–281, License Nos. DPR–32 & DPR–37, 5570 Hog Island Road, Surry, VA 23883–0315.
Roland Ferentz, Manager, Nuclear Security, Susquehanna Steam Electric Station, Units 1&2, Pennsylvania Power and Light Company, Docket Nos. 50–387 & 50–388, License Nos. NPF–14 & NPF–22, 769 Salem Blvd., Berwick, PA 18603.
Michael Bruecks, Three Mile Island Nuclear Station, Unit 1, Amergen Energy Company, LLC, Docket No. 50–289, License No. DPR–50, Route 441 South, Middletown, PA 17057.
William S. Johns, Site Security Supervisor, Turkey Point Nuclear Generating Station, Units 3 & 4, Florida Power & Light Company, Docket Nos. 50–250 & 50–251, License Nos. DPR–31 & DPR–41, 9760 SW 344th Street, Florida City, FL 33035.
Mr. Jay K. Thayer, Site Vice President, Vermont Yankee Nuclear Power Station, Entergy Nuclear Vermont Yankee, LLC, Docket No. 50–271, License No. DPR–28, 185 Old Ferry Road, Brattleboro, VT 05302–0500.
Stephen A. Byrne, Senior Vice President—Nuclear Operations, Virgil C. Summer Nuclear Station, South Carolina Electric & Gas Company, Docket No. 50–395, License No. NPF–12, Hwy 215 N at Bradham Blvd., Jenkinsville, SC 29065.
Doug G. Huyck, Security Manager, Vogtle Electric Generating Plant, Unit 1 & 2, Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 & 50–425, License Nos. NPF–68 & NPF–81, 7821 River Road, Waynesboro, GA 30830.
Joseph E. Venable, Vice President, Operations, Waterford Steam Electric Generating Station, Unit 3, Entergy Operations, Inc., Docket No. 50–382, License No. NPF–38, 17265 River Road, Killona, LA 70066–0751.
Bonnie A. Schnetzler, Security Manager, Watts Bar Nuclear Plant, Unit 1, Tennessee Valley Authority, Docket No. 50–390, License No. NPF–90, Highway 68 Near Spring City, Spring City, TN 37381.
William A. Evans, William B. McGuire Nuclear Station, Units 1 & 2, Duke Energy Corporation, Docket Nos. 50–369 & 50–370, License Nos. NPF–9 & NPF–17, Mail—MG01SC, 12700 Hagers Ferry Road, Huntersville, NC 28078.
David Erbe, Security Manager, Wolf Creek Generating Station, Unit 1, Wolf Creek Nuclear Operating Corporation, Docket No. STN 50–482, License No. NPF–42. 1550 Oten Lane, NE, Burlington, KS 66839.

[FR Doc. 03–11301 Filed 5–6–03; 8:45 am]
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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. (as shown in Attachment 1); License Nos. (as shown in Attachment 1); EA–03–086]**

### All Operating Power Reactor Licensees; Order Modifying Licenses (Effective Immediately)

The licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing operation of nuclear power plants in accordance with the Atomic Energy Act of 1954 and Title 10 of the *Code of Federal Regulations* (10 CFR) part 50. Commission regulations at 10 CFR 50.54(p)(1) require these licensees to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements for reactors are contained in 10 CFR 73.55.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, and eventually Orders to selected licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the nature of the current threat. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements. As part of this review, the Commission issued Orders to the licensees of all operating power reactors on February 25, 2002, to implement interim compensatory measures (ICMs) to enhance physical security of licensed operations at these facilities. In addition, the Commission issued Orders to all operating power reactor licensees on January 7, 2003, to enhance access authorization requirements.

As a result of information provided by the intelligence community concerning the nature of the threat and the Commission's assessment of this

information, the Commission has determined that a revision is needed to the Design Basis Threat (DBT) specified in 10 CFR 73.1. Therefore, the Commission is imposing a revised DBT, as set forth in Attachment 2[1] of this Order, on all operating power reactor licensees. The revised DBT, which supercedes the DBT specified in 10 CFR 73.1, provides the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. The requirements of this Order remain in effect until the Commission determines otherwise. To address the DBT set forth in Attachment 2 of this Order, all licensees must revise their physical security plans, safeguards contingency plans, and guard training and qualification plans that are required by 10 CFR 50.34(c), 50.34(d), and 73.55(b)(4)(ii), respectively.

In order to provide assurance that licensees are implementing prudent measures to protect against the revised DBT, all licenses identified in Attachment 1 to this Order shall be modified to require that the physical security plans, safeguards contingency plans, and the guard training and qualification plans required by 10 CFR 50.34(c), 50.34(d), and 73.55(b)(4)(ii) be revised to provide protection against this revised DBT. Consistent with the provisions of 10 CFR 73.55(a), the licensee may provide measures for protection against the DBT specified in Attachment 2 to this Order other than those required by 10 CFR 73.55 if the licensee demonstrates: (1) That the measures have the same high assurance objective as specified in 10 CFR 73.55(a); and (2) that the overall level of system performance provides protection against the DBT specified in Attachment 2 to this Order equivalent to that which would be provided by 10 CFR 73.55(b) through (h) and meets the general performance requirements of 10 CFR 73.55. Upon completion of NRC review and approval of the revised physical security plans, including pertinent requirements of the Order issued on February 25, 2002, safeguards contingency plans, and guard training and qualification plans, and their full implementation, the Commission will consider requests to relax or rescind, either in whole or in part, the requirements of the Order issued on February 25, 2002, imposing ICMs. In addition, pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety, and interest and the common defense and security require that this Order be immediately effective.

Accordingly, pursuant to sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50 and 73, *it is hereby ordered, effective immediately, that all licenses identified in attachment 1 to this order are modified as follows:*

A. 1. All licensees shall, notwithstanding the provisions of any Commission regulation, license, or order to the contrary, revise their physical security plans and safeguards contingency plans, prepared pursuant to 10 CFR 50.34(c) and 50.34(d), to provide protection against the DBT set forth in Attachment 2 to this Order. In addition, all licensees shall, notwithstanding the provisions of any Commission regulation, license, or order to the contrary, revise their guard training and qualification plans, required by 10 CFR 73.55(b)(4)(ii), to implement the DBT set forth in Attachment 2 to this Order. The licensees shall submit the revised physical security plans, safeguards contingency plans, and guard training and qualification plans, including an implementation schedule, to the Commission for review and approval no later than April 29, 2004.

2. The revised physical security plans, revised safeguards contingency plans, and revised guard training and qualification plans, must be fully implemented by the licensees no later than October 29, 2004.

B. 1. All licensees shall, within thirty-five (35) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements of this Order, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from, or variation of, any specific requirement.

2. Any licensee that considers that implementation of any of the requirements of this Order would adversely impact safe operation of the facility must notify the Commission, within thirty-five (35) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives of this Order, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. All licensees shall report to the Commission, in writing, when they have fully implemented the approved revisions to their physical security plans, safeguards contingency plans, and guard training and qualification plans, to protect against the DBT described in Attachment 2 to this Order.

D. Notwithstanding the provisions of any Commission regulation, license, or order to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise, except that licensees may make changes to their revised physical security plans and safeguards contingency plans and guard training and qualification plans if authorized by 10 CFR 50.54(p).

Licensee responses to Conditions A.1, B.1, B.2, and C above, shall be submitted in accordance with 10 CFR 50.4. In addition, licensee submittals that contain safeguards information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within thirty-five (35) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for an extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the

[1] Attachment 2 contains safeguards information and will not be released to the public.

Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final thirty-five (35) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this Order.*

For the Nuclear Regulatory Commission.

Dated this 29th day of April 2003.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

**Attachment 1**

**List of Addressees**

Michael R. Higgins, Superintendent of Plant Security, Arkansas Nuclear One, Units 1 & 2, Entergy Operations, Inc., Docket Nos. 50–313 & 50–368, License Nos. DPR–51 & NPF–6, 1448 S.R. 333, Russellville, AR 72802.

Mark Bezilla, Vice President, Beaver Valley Power Station, Units 1 & 2, FirstEnergy Nuclear Operating Company, Docket Nos. 50–334 & 50–412, License Nos. DPR–66 & NPF–73, Route 168, Shippingport, PA 15077–0004.

Gregory Baker, Braidwood Station, Units 1 & 2, Exelon Generation Company, LLC, Docket Nos. STN 50–456 & STN 50–457, License Nos. NPF–72 & NPF–77, 35100 S. Rt. 53, Suite 84, Braceville, IL 60407.

Ashok S. Bhatnagar, Site Vice President, Browns Ferry Nuclear Plant, Units 1, 2, & 3, Tennessee Valley Authority, Docket Nos. 50–259, 50–260 & 50–296, License Nos. DPR–33, DPR–52 & DPR–68, Intersection Limestone Country Roads 20 and 25, Athens, AL 35611.

Allen Brittain, Security Manager, Brunswick Steam Electric Plant, Units 1 & 2, Progress Energy, Docket Nos. 50–325 & 50–324, License Nos. DPR–71 & DPR–62, Hwy 87, 2.5 Miles North, Southport, NC 28461.

David Combs, Byron Station, Units 1 & 2, Exelon Generation Company, LLC, Docket Nos. STN 50–454 & STN 50–455, License Nos. NPF–37 & NPF–66, 4450 N. German Church Road, Byron, IL 61010.

J. Mark Dunbar, Security Manager, Callaway Plant, Unit 1, Ameren Union Electric Company, Docket No. STN 50–483, License No. NPF–30, Highway CC (5 Miles North of Highway 94), Portland, MO 65067.

Vince Williams, Security Programs Specialist, Calvert Cliffs Nuclear Power Plant, Units 1 & 2, Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 & 50–318, License Nos. DPR–53 & DPR–69, 1650 Calvert Cliffs Parkway, Lusby, MD 20657.

G. R. Peterson, Vice President Catawba Site, Catawba Nuclear Station, Units 1 & 2, Duke Power Company, Docket Nos. 50–413 & 50–414, License Nos. NPF–35 & NPF–52, 4800 Concord Road, York, SC 29745.

Ed Wrigley, Security Manager, Clinton Power Station, AmerGen Energy Company, LLC, Docket No. 50–461, License No. NPF–62, Route 54 East, Clinton, IL 61727.

J. V. Parrish, Chief Executive Officer, Columbia Generating Station, Energy Northwest, Docket No. 50–397, License No. NPF–21, Snake River Warehouse, North Power Plant Loop, Richland, WA 99352.

Neil Harris, Comanche Peak Steam Electric Station, Units 1 & 2, TXU Electric & Gas, Docket No. 50–445 & 50–446, License Nos. NPF–87 & NPF–89, FM 56, 5 Miles North of Glen Rose, Glen Rose, TX 76043.

Martin Faulkner, Security Manager, Cooper Nuclear Station, Nebraska Public Power District, Docket No. 50–298, License No. DPR–046, 1200 Prospect Road, Brownville, NE 68321–0098.

Marty Folding, Security Manager, Crystal River Nuclear Generating Plant, Unit 3, Progress Energy, Docket No. 50–302, License No. DPR–72, Crystal River Energy Complex, 15760 West Power Line Street (NAID), Crystal River, FL 34428–6708.

William Mugge, Security Manager, Davis-Besse Nuclear Power Station, FirstEnergy Nuclear Operating Company, Docket No. 50–346, License No. NPF–3, 5501 N. State, Route 2, Oak Harbor, OH 43449.

Ron Todaro, Security Director, Diablo Canyon Nuclear Power Plant, Units 1 & 2, Pacific Gas & Electric Company, Docket Nos. 50–275 & 50–323, License Nos. DPR–80 & DPR–82, 9 Miles Northwest of Avila Beach, Avila Beach, CA 93424.

Garland Gibson, Manager, Site Protective Services, Donald C. Cook Nuclear Plant, Units 1& 2, American Electric Power, Docket Nos. 50–315 & 50–316, License Nos. DPR–58 & DPR–74, 1 Cook Place, Bridgman, MI 49106.

Valheria Gengler, Dresden Nuclear Power Station, Units 2 & 3, Exelon Generation Company, Docket Nos. 50–237 & 50–249, License Nos. DPR–19 & DPR–25, 6500 North Dresden Road, Morris, IL 60450–9765.

Ben Kindred, Security Manager, Duane Arnold Energy Center, Nuclear Management Co., Docket No. 50–331, License No. DPR–49, 3277 DAEC Road, Palo, Iowa 52324.

John R. Thompson, Security Manager, Edwin I. Hatch Nuclear Plant, Unit 1 & 2, Southern Nuclear Operating Company, Inc., Docket Nos. 50–321 & 50–366, License Nos. DPR–57 & NPF–5, Plant E. I. Hatch, U.S. Hwy #1 North, Baxley, GA 31515–2010.

Joe Korte, Nuclear Security Manager, Fermi, Unit 2, Detroit Edison Company, Docket No. 50–341, License No. NPF–43, 6400 N. Dixie Highway, Newport, MI 48166.

John Sefick, Manager, Security & Emergency Planning, Fort Calhoun Station, Omaha Public Power District, Docket No. 50–285, License No. DPR–40, 9750 Power Lane, Blair, NE 68008.

Greg D. Brown, Grand Gulf Nuclear Station, Unit 1, Entergy Operations, Inc., Docket No. 50–416, License No. NPF–29, Bald Hill Road—Waterloo Road, Port Gibson, MS 39150.

Scott Young, Security Superintendent, H.B. Robinson Steam Electric Plant, Unit 2, Carolina Power & Light Company, Docket No. 50–261, License No. DPR–23, 3581 West Entrance Road, Hartsville, SC 29550.

David Thompson, Security Manager, Indian Point Nuclear Generating Station, Units 2 & 3, Entergy Nuclear Operations, Inc., Docket Nos. 50–247 & 50–286, License Nos. DPR–26 & DPR–64, Mail Stop K-IP2–4331, 295 Broadway, Suite 1, Buchanan, NY 10511.

J. Haley, Security Manager, James A FitzPatrick Nuclear Power Plant, Entergy Nuclear Operations, Inc., Docket No. 50–333, License No. DPR–59, 268 Lake Road, Lycoming, NY 13093.

Ken Dyer, Site Security Manager, Joseph M. Farley Nuclear Plant, Units 1 & 2, Southern

Nuclear Operating Co., Docket Nos. 50–348 & 50–364, License No. NPF–2 & NPF–8, 7388 North Sate Highway 95, Columbia, AL 36319–4120.

Mark Fencl, Security Manager, Kewaunee Nuclear Power Plant, Nuclear Management Co., Docket No. 50–305, License No. DPR–43, N 490 Highway 42, Kewaunee, WI 54216–9510.

Cindy Wilson, LaSalle County Station, Units 1 & 2, Exelon Generation Company, Docket No. 50–373 & 50–374, License Nos. NPF–11 & NPF–18, 2601 North 21st Road, Marseilles, IL 61341–9757.

Peter R. Supplee, Limerick Generating Station, Units 1 & 2, Exelon Generation Company, LLC, Docket No. 50–352 & 50–353, License Nos. NPF–39 & NPF–85, Evergreen & Sanatoga Road, TSC 1–2, Sanatoga, PA 19464.

J. Alan Price, Site Vice President, c/o Mr. David W. Dodson, Millstone Power Station, Units 2 & 3, Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 & 50–423, License Nos. DPR–65 & NPF–49, Rope Ferry Road, Waterford, CT 06385.

Brian B. Linde, Security Manager, Monticello Nuclear Generating Plant, Nuclear Management Company, Docket No. 50–263, License No. DPR–22, 2807 W. Highway 75, Monticello, MN 55362.

Mr. John T. Conway, Site Vice President, Nine Mile Point Nuclear Station, Units 1 & 2, Nine Mile Point Nuclear Station, LLC, Docket Nos. 50–220 & 50–410, License Nos. DPR–63 & NPF–69, 348 Lake Road, Oswego, NY 13126.

Tim Maddy, Manager, Station Nuclear Security, North Anna Power Station, Units 1 & 2, Virginia Electric & Power Company, Docket Nos. 50–338 & 50–339, License Nos. NPF–4 & NPF–7, 1022 Haley Drive, Mineral, Virginia 23117.

Terry King, Security Manger, Oconee Nuclear Station, Units 1, 2, & 3, Duke Energy Corporation, Docket Nos. 50–269, 50–270 & 50–287, License Nos. DPR–38, DPR–47 & DPR–55, 7800 Rochester Highway, Seneca, SC 29672.

Rick Ewart, Security Manager, Oyster Creek Nuclear Generating Station, AmerGen Energy Company, LLC, Docket No. 50–219, License No. DPR–16, Route 9 South, Forked River, NJ 08731.

Douglas Cooper, Site Vice President, Palisades Plant, Nuclear Management Company, Docket No. 50–255, License No. DPR–20, 27780 Blue Star, Memorial Highway, Covert, MI 49043.

Michael W. Priebe, Dept. Leader-Security Operations, Palo Verde Nuclear Generating, Units 1, 2 & 3, Arizona Public Service Company, Docket Nos. STN 50–528, 50–529 & STN 50–530, License Nos. NPF–41, NPF–51 & NPF–74, 5801 S. Wintersburg Road, Tonapah, Arizona 85354–7529.

Wayne Trump, Manager—Site Security, Peach Bottom Atomic Power Station, Units 2 & 3, Exelon Generation Company, LLC, Docket Nos. 50–277 & 50–278, License Nos. DPR–44 & DPR–56, 1848 Lay Road, Delta, PA 17314.

Thomas Mahon, Security Manager, Perry Nuclear Power, Unit 1, FirstEnergy Nuclear Operating Company, Docket No. 50–440, License No. NPF–58, 10 North Center Street, Perry, OH 44081.

Michael Bellamy, Senior Vice President, Pilgrim Nuclear Power Station, Unit 1, Entergy Nuclear Generation Company, Docket No. 50–293, License No. DPR–35, Rocky Hill Road, Plymouth, MA 02360.

Mark Fencl, Security Manager, Point Beach Nuclear Plant, Units 1 & 2, Nuclear Management Company, Docket Nos. 50–266 & 50–301, License Nos. DPR–24 & DPR–27, 610 Nuclear Road, Two Rivers, WI 54241.

John Waddell, Security Manager, Prairie Island, Units 1 & 2, Nuclear Management Company, Docket No. 50–282 & 50–306, License No. DPR–42 & DPR–60, 1717 Wakonade Drive East, Welch, MN 55089.

Tim Tulon, Site Vice President, Quad Cities Nuclear Power Station, Units 1 & 2, Exelon Generation Company, Docket Nos. 50–254 & 50–265, License Nos. DPR–29 & DPR–30, 22710—206th Ave., North, Cordova, IL 61242.

Ronald C. Teed, Site Security Supervisor, R. E. Ginna Nuclear Power Plant, Rochester Gas & Electric Corporation, Docket No. 50–244, License No. DPR–18, 1503 Lake Road, Ontario, NY 14519.

Andre James, Security Manager, River Bend Station, Entergy Operations, Inc., Docket No. 50–458, License No. NPF–47, 5485 U.S. Highway 61, St. Francisville, LA 70775.

Ted Straub, Manager of Nuclear Security & Fire, Security Center, Salem Nuclear Generating Station, Units 1 & 2, Docket Nos. 50–272 & 50–311, License No. DPR–70 & DPR–75, Hope Creek Generating Station, Unit 1, Docket No. 50–354, License No. NPF–57, PSEG Nuclear LLC, End of Buttonwood Road, Hancocks Bridge, NJ 08038.

John Todd, Manager, Site Security, San Onofre Nuclear Station, Units 2 & 3, Southern California Edison, Docket Nos. 50–361 & 50–362, License Nos. NPF–10 & NPF–15, 5000 Pacific Coast Highway (A82), San Clemente, CA 92674.

James Pandolfo, Security Manager, Seabrook Station, Unit 1, FPL Energy Seabrook, LLC, Docket No. 50–443, License No. NPF–86, Central Receiving, Lafayette Road, Seabrook, NH 03874.

Kenneth Stevens, Security Manager, Sequoyah Nuclear Plant, Units 1 & 2 (OPS5N), Tennessee Valley Authority (TVA), Docket Nos. 50–327 & 50–328, License Nos. DPR–77 & DPR–79, Sequoyah Road, Soddy Daisy, TN 37384.

Denny Braund, Shearon Harris Nuclear Power Plant, Unit 1, Carolina Power & Light Company, Docket No. 50–400, License No. NPF–63, 5413 Shearon Harris Road, New Hill, NC 27562.

William T. Cottle, President & Chief Executive Officer, South Texas Project Electric Generating Company, Units 1 & 2, STP Nuclear Operating Company, Docket Nos. 50–498 & 50–499, License Nos. NPF–76 & NPF–80, 8 Miles West of Wadsworth, on FM 521, Wadsworth, TX 77483.

Gary L. Varnes, Site Security Manager, St. Lucie Nuclear Plant, Units 1 & 2, Florida Power & Light Company, Docket Nos. 50–335 & 50–389, License Nos. DPR–67 & NPF–16, 6351 South Ocean Drive, Jensen Beach, FL 34957.

Curtis Luffman, Surry Power Station, Units 1 & 2, Virginia Electric & Power Company, Docket Nos. 50–280 & 50–281, License Nos. DPR–32 & DPR–37, 5570 Hog Island Road, Surry, VA 23883–0315.

Roland Ferentz, Manager, Nuclear Security, Susquehanna Steam Electric Station, Units 1&2, Pennsylvania Power and Light Company, Docket Nos. 50–387 & 50–388, License Nos. NPF–14 & NPF–22, 769 Salem Blvd., Berwick, PA 18603.

Michael Bruecks, Three Mile Island Nuclear Station, Unit 1, Amergen Energy Company, LLC, Docket No. 50–289, License No. DPR–50, Route 441 South, Middletown, PA 17057.

William S. Johns, Site Security Supervisor, Turkey Point Nuclear Generating Station, Units 3 & 4, Florida Power & Light Company, Docket Nos. 50–250 & 50–251, License Nos. DPR–31 & DPR–41, 9760 SW 344th Street, Florida City, FL 33035.

Mr. Jay K. Thayer, Site Vice President, Vermont Yankee Nuclear Power Station, Entergy Nuclear Vermont Yankee, LLC, Docket No. 50–271, License No. DPR–28, 185 Old Ferry Road, Brattleboro, VT 05302–0500.

Stephen A. Byrne, Senior Vice President-Nuclear Operations, Virgil C. Summer Nuclear Station, South Carolina Electric & Gas Company, Docket No. 50–395, License No. NPF–12, Hwy 215 N at Bradham Blvd., Jenkinsville, SC 29065.

Doug G. Huyck, Security Manager, Vogtle Electric Generating Plant, Unit 1 & 2, Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 & 50–425, License Nos. NPF–68 & NPF–81, 7821 River Road, Waynesboro, GA 30830.

Joseph E. Venable, Vice President, Operations, Waterford Steam Electric Generating Station, Unit 3, Entergy Operations, Inc., Docket No. 50–382, License No. NPF–38, 17265 River Road, Killona, LA 70066–0751.

Bonnie A. Schnetzler, Security Manager, Watts Bar Nuclear Plant, Unit 1, Tennessee Valley Authority, Docket No. 50–390, License No. NPF–90, Highway 68 Near Spring City, Spring City, TN 37381.

William A. Evans, William B. McGuire Nuclear Station, Units 1 & 2, Duke Energy Corporation, Docket Nos. 50–369 & 50–370, License Nos. NPF–9 & NPF–17, Mail—MG01SC, 12700 Hagers Ferry Road, Huntersville, NC 28078.

David Erbe, Security Manager, Wolf Creek Generating Station, Unit 1, Wolf Creek Nuclear Operating Corporation, Docket No. STN 50–482, License No. NPF–42, 1550 Oten Lane, NE, Burlington, KS 66839.

[FR Doc. 03–11302 Filed 5–6–03; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–1201]**

### Notice of Availability of Environmental Assessment and Finding of No Significant Impact for the Renewal of Special Nuclear Materials License for Framatome Advanced Nuclear Power, Inc., Lynchburg, VA

**I. Introduction**

The U.S. Nuclear Regulatory Commission (NRC) is considering renewal of NRC Special Nuclear Material License SNM–1168 for Framatome Advanced Nuclear Power, Inc. (FANP) in Lynchburg, VA. Initial operations at the FANP Lynchburg site with enriched uranium were authorized in December 1969. The license was renewed in April 1976, June 1983, and September 1991. The license was extended for 18 months on January 4, 2001.

By application dated March 28, 2002, FANP requested renewal of SNM–1168. FANP submitted an Environmental Report by letter dated March 28, 2002. The NRC published a **Federal Register** notice on August 9, 2002 (67 FR 51894), with a Notice of Opportunity for Hearing on the proposed action. No requests for a hearing were received.

The FANP facility conducts three types of operations: producing fuel assemblies for use in commercial light-water reactors, support activities for nuclear reactor field service operations, and general manufacturing. The activities covered under license SNM–1168 are the fabrication of fuel assemblies and support activities for nuclear reactor field service operations. The proposed renewal of license SNM–1168 is necessary for FANP to continue operation.

The NRC staff performed an Environmental Assessment (EA) in support of its review of FANP's renewal request, in accordance with the requirements of 10 CFR part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

**II. EA Summary**

The scope of the EA included an evaluation of the activities authorized under license SNM–1168, as well as other activities which could potentially affect licensed activities. Principal activities in the facility include the processing of low-enriched uranium (≤ 5.1%), received as $UO_2$ pellets. Other activities conducted in conjunction with nuclear fuel fabrication include: fabrication of poison rods, download of finished fuel bundles and rods, repair of returned fuel assemblies, laboratory operations and waste disposal operations.

On the basis of its assessment, the NRC staff has concluded that the environmental impacts associated with the proposed license renewal for continued operation at the Lynchburg facility would not be significant and, therefore, the proposed action does not warrant the preparation of an environmental impact statement. All existing requirements for environmental monitoring and protection will be continued to evaluate future impacts.

**III. Further Information**

The full EA (ADAMS Accession No. ML030940720) and the following documents related to the proposed action, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*: (1) Framatome ANP, Inc., Response to the Request for Additional Information for License Renewal, SNM–1168, Docket No. 70–1201, November 8, 2002 (ADAMS Accession No. ML023230413); (2) Letter to Peter Lee re: Special Nuclear Material License Renewal of Framatome ANP, Mt. Athos Road Facility, #2708, Campbell County, VA, October 2, 2002 (ADAMS Accession No. ML022810449); (3) Application for License Renewal of SNM–1168, Docket No. 70–1201, March 28, 2002 (ADAMS Accession No. ML020940468); and, (4) Supplement to the Environmental Report, SNM–1168, Docket No. 70–1201, March 28, 2002 (ADAMS Accession No. ML020930031). These documents and B&W Fuel Company's letter to Robert Pierson re: Exemption from Emergency Plan, March 21, 1994, may also be examined and copies for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Ms. Julie Olivier, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T-8 A33, Washington, DC 20555–0001. Telephone (301)415–8089.

Dated in Rockville, Maryland, this 28th day of April, 2003.

For the Nuclear Regulatory Commission.

**Susan M. Frant,**

*Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 03–11304 Filed 5–6–03; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–143]**

### Environmental Assessment and Finding of No Significant Impact of License Amendment for Nuclear Fuel Services, Inc.

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Amendment of Nuclear Fuel Services, Inc., Materials License SNM–124 to include source reduction measures as authorized decommissioning-related activities.

**Environmental Assessment**

*Introduction*

The U.S. Nuclear Regulatory Commission (NRC) is considering the amendment of Special Nuclear Material License SNM–124. The proposed amendment will allow the licensee to reduce the source term at the site through removal of contaminated soil from the Nuclear Fuel Services (NFS) site in Erwin, Tennessee. The NRC has prepared an Environmental Assessment (EA) in support of NFS' amendment request, in accordance with 10 CFR part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

*Background*

By request for license amendment dated April 3, 2002, NFS applied for approval to reduce the source term at the site by removal of contaminated soil to levels at or below those protective of worker health as defined in 10 CFR 20.1201 (Ref. 1).

NFS began operations at the Erwin, Tennessee facility in 1957. Through the years, portions of the site became contaminated with radioactive material. From 1957 until 1981, portions of the site were used for disposal, through burial, of radioactive waste in accordance with 10 CFR 20.304, which allowed for this type of disposal. The regulations in 10 CFR part 20 have since been revised and § 20.304 no longer exists and burial disposal is no longer allowed. The soil in the area of the disposal site is now considered to be contaminated. Soils in other portions of the site are also contaminated due to accidental spills of licensed material and from inadvertent leaks from process equipment.

*Review Scope*

In accordance with 10 CFR part 51, this EA serves to (1) present information and analysis for determining whether to

issue a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS); (2) fufill the NRC's compliance with the National Environmental Policy Act when no EIS is necessary; and (3) facilitate preparation of an EIS when one is necessary. Should the NRC issue a FONSI, no EIS would be prepared and the license amendment would be granted.

This document serves to evaluate and document the impacts of the proposed action. Other activities on the site have previously been evaluated and documented in the 1999 EA for the Renewal of the NRC license for NFS (Ref. 2). The 1999 document is referenced when no significant changes have occurred. Besides the proposed licensing action, operations will continue to remain limited to those authorized by the license.

*Proposed Action*

The proposed action is to reduce the source term at the site by removal of contaminated soil to levels at or below those protective of worker health as defined in 10 CFR 20.1201. The licensee's current remediation efforts are being performed under existing license conditions so that activities will be protective of worker health.

*Need for Proposed Action*

The current license conditions do not authorize removal of contaminated soil, thus the licensee needs approval from the NRC to do so. The proposed action is consistent with the requirements in 10 CFR 70.38 and 10 CFR part 20. At the time of license termination for the entire NFS site, the results of soil removal would be reassessed in order to incude any possible contribution from the remediated area in the dose assessment for the entire site.

The proposed action would allow NFS to remove contaminated material and soil until the residual concentrations of radionuclides are at or below levels protective of human health. The major activities include the following:

- Remove buildings, surrounding tanks, utilities, and structures,
- Remove contaminated soil and dispose of it in accordance with regulations controlling material of the concentration in the soil, and
- Backfill the area with clean soil.

NFS will stockpile and cover contaminated soil that exceeds the applicable criteria as appropriate, transport it to a processing area, or load it directly into containers. This material will be disposed of in a licensed facility.

The soil remediation activities proposed are essentially the same as those NFS is currently using in the North Site area. NRC has evaluated these in detail and found that the activities were acceptable in the EA for the North Site remediation (66 FR 27168) (Ref. 3). An existing license condition authorizes building deconstruction; NRC has evaluated this and found all licensed activities to be acceptable during the licensing process. The addition of the relatively small volume of contaminated waste from the contaminated portions of the facility (~ 68,000 cubic ft), to that of the North Site Area (~ 1 million cubic feet), will not have a measurable impact, either locally, in transit to disposal, or at the disposal sites.

Ground water remediation is not a specific goal of this activity. If, however, contaminated ground water is encountered during soil excavation, it will be processed at either the licensee's Wastewater or Ground Water Treatment Facilities.

*Alternatives to the Proposed Action*

NRC considered two alternatives to the proposed action. These are described below.

Alternative 1—No action.

This alternative is to leave the site in its current, contaminated condition. Leaving the site in this condition would not comply with NRC regulations that require remediation of unused outdoor areas. Therefore, this alternative is not acceptable.

Alternative 2—Require remediation of both groundwater and soil to levels such that doses from all pathways meet criteria for unrestricted use.

This alternative would require calculation of doses from existing contamination both in soil and in water-borne sources. NFS would have to calculate residual contamination limits in both media. NFS would then have to reduce the residual concentration in both media to levels that would limit the all-pathways-dose to 25 mrem/yr as specified in 10 CFR 20.1402.

NRC has concluded that this alternative is not appropriate for the following reasons:

- The active use area of the facility will not be released from the license at this time, therefore it is not available for unrestricted use; and
- The licensee is obligated to remediate affected areas to comply with limits in the License Termination Rule at the time of license termination.

*Affected Environment*

The affected environment for the proposed action and all of the alternatives is the NFS site. A full description of the site and its characteristics is given in the 1999 Environmental Assessment (EA) for the Renewal of the NRC license for NFS (Ref. 2).

Facility Operations

Before NFS operations, the area was a farm, as was much of the surrounding area. The area being remediated is inside the plant protected area that is defined by a double security fence. Within the protected area are Banner Spring Branch, a small marsh, open grass-covered grounds, the three surface impoundments, and Pond 4. Banner Spring Branch runs through the property originating in the east just outside the security fence and discharging into Martin Creek to the north. The grounds outside the plant protected area, but inside the outer access control fence (the perimeter fence), include grass-covered fields, wooded areas, and a marsh. Also present are a burial ground and a demolition landfill. Trees cover most of the grounds outside the perimeter fence.

Radiological Status of Surface and Subsurface Soils

The primary radioactive contaminants in the contaminated soils are uranium (U-234, U-235, and U-238), thorium (Th-228, Th-230, and Th-232), plutonium (Pu-238, Pu-239/240, Pu-241, and Pu-242), americium 241, and technetium 99. Levels of radioactive contamination currently exceed the release criteria in soil and sediment across much of the site inside the plant protected area. Contamination is present down to the level of auger refusal in much of the protected area. Contamination also exists between the cobbles.

*Environmental Impacts of the Proposed Action*

Radiological Impacts

NFS will ship excavated material to a licensed disposal facility. The licensee's radiological protection program requires use of hazardous work permits that will limit dose to workers to less than or equal to the limits in 10 CFR part 20.

Minor spills and releases may occur as contaminated soil is being prepared for shipment or during transport to an offsite disposal facility. Spills and releases of dirt would pose only negligible impact to human health and the environment. In case of a spill of this nature, decontamination efforts and any required notification would be performed in accordance with NFS procedures.

*Non-Radiological Impacts*

Portions of the site, primarily the ground water, are contaminated with solvents (perchloroethylene (PCE) and trichloroethylene (TCE)) from NFS activities. These materials are the subject of an U.S. Environmental Protection Agency (EPA) and Tennessee Department of Environment and Conservation (TDEC) Resource Conservation and Recovery Act (RCRA)/ Hazardous and Solid Waste Amendments (HSWA) Permit requiring investigation and remediation in a timeframe agreed upon between, EPA, TDEC and NFS. Separate from the proposed action, however, NFS has recently implemented a pilot groundwater remediation study to accommodate all groundwater contaminants; *i.e.*, radioactive and non-radioactive. These activities were reviewed in the North Site EA by the NRC, TDEC and EPA, and are not specifically addressed herein (Ref. 3).

*Historical and Archaeological Resources*

The Tennessee Historic Preservation Officer reviewed the site for historic structures during the EA for the North Site decommissioning and determined '' that there is no national register of historic places listed or eligible properties affected by this undertaking.'' This activity is in the same general area as the North Site decommissioning activities (Ref. 4), therefore, the Historic Preservation Office was not consulted for this EA.

Biota

In the consultations for the EA on the North Site area, the U.S. Fish and Wildlife Service (FWS) determined that there are two Federally endangered mollusks (*Epioblasma torulosa torulose* and *Alasmidonta reveneliana*) in the Nolichucky River upstream of the NFS site; these will not be affected by the planned operation. There is also a Federally threatened plant in the vicinity of the NFS site: Virginia spiraea (*Spiraea virginiana*). These evaluations collectively considered the entire NFS site area, and concluded that because of the industrial nature of the NFS site and surrounding area, there is no suitable habitat for these species at the site. The FWS confirmed that these are the only listed species in Unicoi County (Ref. 5).

Water Resources

Ground water remediation is not a specific part of the proposed alternative. The contamination, except that encountered during soil excavation, will remain in the alluvial groundwater. However, as previously discussed in the North Site decommissioning plan (Ref. 3), this groundwater will not be used as a water supply, therefore it will not contribute to a dose to members of the public.

Surface water is not expected to be impacted from approval of this amendment application. There will be no direct effluent discharges to surface water as a result of the proposed activity. Surface water is expected to continue to be protected from site activities through release limits and monitoring programs, as required by the National Pollutant Discharge Elimination System (NPDES) permit, which is regulated by the TDEC.

Construction Impacts

No building destruction will occur as part of this action; removal of buildings was previously authorized and evaluated by license condition. Soil excavation will be done in the same manner as for the North Site that NRC previously evaluated and authorized (Ref. 6). No adverse effects will occur in the environment from this activity.

Impacts to Aesthetic, Economic, Cultural, Social, Air Quality, Noise Resources and Habitat Destruction

There will be no discernable impacts on aesthetics, socio-economics or cultural resources because the work is being done by existing staff and the physical configuration of the facility will remain the same.

There may be minor, temporary impacts on air quality and noise during remediation activities. NFS has dust-control measures in place for excavation activities, and the use of equipment will not significantly change from the current industrial environment.

*Environmental Monitoring*

NFS conducts a sampling program of ambient soil, vegetation, surface water, and sediment to monitor impacts from the Erwin Plant to the surrounding area. Details of the monitoring program are described in the Renewal EA (Ref. 2). Also, environmental dosimeters are at onsite and offsite locations to monitor ambient external dose rates and to assist with the assessment of potential accidents.

The areas to be remediated will remain within licensee control and will be monitored according to the pertinent provisions of the license for operational and environmental monitoring.

*Agencies and Individuals Consulted, and Sources Used*

U.S. Environmental Protection Agency, Region IV

EPA Region IV has reviewed the proposed action and concludes that:

- The RCRA/HSWA Permit issued to NFS will be used to enforce appropriate groundwater pilot studies and necessary groundwater remediation of all contaminated groundwater; and
- The RCRA/HSWA Permit issued to NFS will be used to enforce appropriate and necessary layered institutional controls (ICs).
- EPA Region IV has no objection to the proposed activity (Ref. 7).

Tennessee Department of Environment and Conservation (TDEC)

TDEC has no objections to the proposed action (Ref. 8).

U.S. Fish and Wildlife Service (FWS)

The U.S. Fish and Wildlife Service was consulted for North Site decommissioning (Ref. 5). Its evaluations collectively considered the entire NFS site area, and concluded that because of the industrial nature of the NFS site and surrounding area, there is currently no suitable habitat for the three local endangered/threatened species at the site. FWS was contacted to confirm that there are still only three listed species in Unicoi County, TN.

*Finding of No Significant Impact*

Based upon the environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has concluded that environmental impacts associated with the proposed action would do not warrant the preparation of an Environmental Impact Statement. It has been determined that a Finding of No Significant Impact is appropriate.

*References*

1. B. Marie Moore, April 3, 2002. License Amendment Request to Include Source Reduction Measures as Authorized Decommissioning-Related Activities. (ADAMS accession number ML021010075).

2. T. Cox, U.S. Nuclear Regulatory Commission, Letter to T.S. Baer, Nuclear Fuel Services, Inc., ''Finding of No Significant Impact and Environmental Assessment (TAC NO. L30873),'' January 29, 1999.

3. Nuclear Fuel Services, Inc. (NFS). 1999. North Site Characterization Report for Nuclear Fuel Services, Inc., Erwin, Tennessee, Revision 1.

4. Tennessee Historical Commission May 22, 2002. Personal communications between Jennifer Bartlett and Julie Olivier.

5. U.S. Fish and Wildlife Services, Tennessee Field Office, November 12,

2002. Personal communications between Jim Widlak and Julie Olivier.

6. NFS North Site Decommissioning Plan, Revision 1, July, 1999.

7. U.S. Environmental Protection Agency, Region 4, September 18, 2002. Personal communications between Leo J. Romanowski, Jr. to James Shepherd.

8. Tennessee Department of Environment and Conservation 2002. Communication, Debra Shults, TDEC and J. C. Shepherd. October 18, 2002.

The references with ADAMS accession numbers may also be viewed in the NRC's Electronic Public Document Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. Any questions with respect to his action should be referred to Ms. Mary Adams, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8 A33, Washington, DC 20555–0001. Telephone 301–415–7249.

Dated in Rockville, MD, this 24th day of April, 2003.

For the Nuclear Regulatory Commission.

**Susan M. Frant,**

*Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 03–11303 Filed 5–6–03; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–26040; File No. 812–12916]**

## Sage Life Assurance of America Inc., et al., Notice of Application

May 1, 2003.

**AGENCY:** Securities and Exchange Commission (''SEC'' or ''Commission'').

**ACTION:** Notice of application for an order pursuant to section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'') approving the substitution of securities.

**APPLICANTS:** Sage Life Assurance of America, Inc., the Sage Variable Annuity Account A and the Sage Variable Life Account A (collectively, the ''Applicants'').

**SUMMARY:** Applicants seek an order to permit, under the specific circumstances identified in the application, the substitution of shares of the portfolios (''Replaced Portfolios'') of the Sage Life Investment Trust (the ''Sage Trust'') with shares of certain portfolios (''Substituting Portfolios'') of other variable insurance products funds as follows: (1) Shares of the S&P 500® Equity Index Fund with Series I shares of the AIM V.I. Premier Equity Fund; (2) shares of the Nasdaq-100 Index® Fund with shares of the Oppenheimer Capital Appreciation Fund/VA; (3) shares of the All-Cap Growth Fund with shares of the Oppenheimer Capital Appreciation Fund/VA; and (4) shares of the Money Market Fund with Series I shares of the AIM V.I. Money Market Fund.

**DATES:** The Application was filed on December 26, 2002, and amended on March 24, 2003, and May 1, 2003.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 22, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Lynn K. Stone, Blazzard, Grodd & Hasenauer, P.C., PO Box 5108, Westport, Connecticut, 06881. Copies to Mitchell R. Katcher, Sage Life Assurance of America, Inc., 969 High Ridge Road, Stamford, CT 06902.

**FOR FURTHER INFORMATION CONTACT:** Rebecca A. Marquigny, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the Application; the complete Application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

*Applicants' Representations*

1. Sage Life Assurance of America, Inc. (''Sage Life'') is a stock life insurance company incorporated in Delaware in 1981. It is licensed to conduct an insurance business in 49 states and the District of Columbia. Sage Life is a wholly-owned subsidiary of Sage Life Holdings of America, Inc. (''Sage Life Holdings''). Sage Insurance Group Inc. (''SIGI'') owns 90.1% of the common stock of Sage Life Holdings and Swiss Re Life & Health America, Inc. (''Swiss Re'') owns the remaining 9.9% of the common stock of Sage Life Holdings. SIGI is a wholly-owned indirect subsidiary of Sage Group Limited (''Sage Group''), a South African corporation quoted on the Johannesburg Stock Exchange.

2. The Sage Variable Annuity Account A and The Sage Variable Life Account A (each a ''Variable Account'' and together the ''Variable Accounts'') are each segregated asset accounts of Sage Life. Each Variable Account was established by Sage Life on December 3, 1997, under Delaware law. The Variable Accounts are used to fund certain contracts issued by Sage Life. Each Variable Account is divided into subaccounts, each of which invests in and reflects the investment performance of a specific underlying registered investment company or portfolio thereof. The Sage Variable Annuity Account A is registered as a unit investment trust under the 1940 Act (File No. 811–08581). The Sage Variable Life Account A is registered as a unit investment trust under the 1940 Act (File No. 811–09339).

3. The Variable Accounts support certain variable annuity contracts and variable life insurance policies (collectively ''the Contracts'') issued by Sage Life. The Contracts allow the contract owners (''Owners'') to allocate Contract values among the subaccounts providing variable investment options. In addition, the Contracts also allow Owners to allocate Contract values to registered fixed account options. Under the Contracts, Sage Life reserves the right to substitute one of the variable investment options with another variable investment option after appropriate notice. Moreover, Sage Life is entitled to limit further investment in a variable investment option if Sage Life deems the variable investment option inappropriate. Thus, the Contracts permit Sage Life to substitute the respective shares of each Replaced Portfolio with the corresponding shares of the Substituting Portfolio.

4. The Sage Trust is a Delaware business trust established under a Declaration of Trust dated January 9, 1998, and currently consists of four separately managed portfolios (''Portfolios'' or ''Replaced Portfolios''). The Sage Trust is a diversified, open-end investment management company registered under the 1940 Act (File No. 811–08623), and its shares are registered as securities under the Securities Act of 1933 (''1933 Act'') (File No. 333–45293). The shares of the Sage Trust are sold exclusively to the Variable Accounts of Sage Life to fund benefits under the Contracts. Sage Advisors, Inc. (''Sage Advisors'') is the investment adviser for

the Sage Trust. Sage Advisors is a wholly-owned subsidiary of SIGI. Sage Advisors has engaged sub-advisers for each of the Portfolios of the Sage Trust to make investment decisions and place orders.

5. Sage Life anticipates that the Sage Trust expense reimbursement arrangement will be discontinued as of May 1, 2003, and will result in a substantial increase in Sage Trust expenses with a corresponding decrease in the performance of the Sage Trust Portfolios. To date, the cash needs of the Sage insurance operations in the United States (including Sage Life), have been met primarily through (i) capital contributions from Sage Group, (ii) the funding of Sage Life's commission and acquisition expenses through a modified coinsurance arrangement (''Modco Agreement'') with Swiss Re, (iii) issuance of preferred stock to Swiss Re, and (iv) through interest income on the invested assets of SIGI and Sage Life's general account.

During 2001, it was determined that the cash needs of SIGI and its subsidiaries could not be met solely by the methods described above. Sage Group had been and is currently prohibited under South African currency controls from using funds raised in South Africa for SIGI's cash needs, other than with funds raised through capital issues denominated in currencies other than the South African rand. Furthermore, Sage Group's ability to issue stock outside of South Africa has been hindered by a severe devaluation of the South African rand relative to the United States dollar and a decrease in its stock price reflective of a general decline of financial services stocks in South Africa and elsewhere. Consequently, Sage Group has not issued new securities in the international markets to provide for the cash needs of SIGI and its subsidiaries.

Effective January 1, 2003, Sage Life ceased all new sales of variable annuity and variable life insurance products. This action was taken due to the inability of Sage Life and its parents to raise the capital necessary to meet the ongoing needs of Sage Life. Sage Life is currently proceeding towards establishing the facilities necessary to administer an orderly disposition of the in-force business. Sage Life's ratings have been downgraded several times over recent months by the rating agencies. Further, Sage Life has substantially reduced its number of employees in recent months, and further layoffs are planned.

Sage Advisors has, since its inception, been subsidized by Sage Group. Because of the limitations imposed on Sage Group, as described above, no further capital is available, and as a result, Sage Group no longer subsidizes the expenses of Sage Advisors. Sage Life is not able to assume financial responsibility for Sage Advisors. The advisory fee paid by the Portfolios of Sage Trust to Sage Advisors is not sufficient to cover the expenses incurred by Sage Advisors in managing the Trust. Given the above, Sage Advisors will soon be unable to continue to manage the Trust.

Since Sage Trust's inception, Sage Advisors has voluntarily reimbursed certain operating expenses of each Portfolio of Sage Trust. However, given its financial condition, Sage Advisors will no longer reimburse expenses of Sage Trust effective May 1, 2003.

6. Applicants request the Commission's approval to effect the substitutions of the shares of portfolios of other variable insurance products funds (''Substituting Portfolios'') for the shares of the Replaced Portfolios (the ''Substitution''). The Substituting Portfolios are series of open-end management investment companies registered under the 1940 Act, the shares of which are registered as securities under the 1933 Act. Applicants represent that the Substituting Portfolios, in general, have similar investment objectives to, and more assets, better performance and lower expense ratios than, the Replaced Portfolios. The Replaced Portfolios and the corresponding Substituting Portfolios are as follows:

| Replaced portfolios | Substituting portfolios |
|---|---|
| S&P 500® Equity Index Fund. | AIM V.I. Premier Equity Fund (Series I Shares).[1] |
| Nasdaq-100 Index® Fund. | Oppenheimer Capital Appreciation Fund/VA.[2] |
| All-Cap Growth Fund | Oppenheimer Capital Appreciation Fund/VA |
| Money Market Fund .. | AIM V.I. Money Market Fund (Series I Shares).[3] |

7. For the shares of each Replaced Portfolio held on behalf of the Variable Accounts at the close of business on the date selected for the Substitution, Sage Life will redeem those shares for cash. Simultaneously, Sage Life, on behalf of the Variable Accounts, will place a purchase order for shares of each Substituting Portfolio so that each purchase will be for the exact amount of the redemption proceeds. Accordingly, at all times monies attributable to Owners then invested in the Replaced Portfolio will remain fully invested, and the transaction will result in no change in the amount of any Owner's Contract value, death benefit or investment in the Variable Accounts.

8. Applicants represent that the full net asset value of the redeemed shares held by the Variable Accounts will be reflected in the Owners' Contract values following the Substitution. The Applicants represent that the Owners will not bear, directly or indirectly, any expenses, including brokerage expenses, for the Substitution so that the full net asset value of redeemed shares of the Replaced Portfolio held by the Variable Accounts will be reflected in the Owners' Contract values following the Substitution.

9. The Sage Trust is fully advised of the terms of the Substitution. Applicants anticipate that until the Substitution occurs, the Sage Trust will conduct the trading of portfolio securities in accordance with the investment objectives and strategies stated in the Sage Trust's prospectus and in a manner that provides for the anticipated redemptions of shares held by the Variable Account Applicants.

10. Applicants have determined that the Contracts allow the Substitution as described in the application, and that the transactions are permissible in the manner described under applicable insurance laws and under the Contracts. In addition, Applicants represent that, prior to effecting the Substitution, they will comply with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts are qualified for sale.

11. Applicants represent that affected Owners will not incur any fees or charges, directly or indirectly, as a result of the Substitution, nor will the rights or obligations of Sage Life under the Contracts be altered in any way. Applicants represent that the proposed Substitution will not have any adverse tax consequences to Owners, nor will it cause Contract fees and charges currently being paid by existing Owners to be greater after the proposed Substitution than before the proposed Substitution. The Contracts provide that there are currently no restrictions on the number of transfers that an Owner can make. Currently, Sage Life does not assess a transfer fee. However, it reserves the right to impose a charge of up to $25 on each transfer in a Contract year in excess of twelve, and to limit, upon notice, the maximum number of transfers that can be made per month or

[1] SEC File Numbers 33–57340 and 811–7452.
[2] SEC File Numbers 002–93177 and 811–4108.
[3] SEC File Numbers 33–57340 and 811–7452.

year. The proposed Substitution will not be treated as a transfer for the purpose of assessing transfer fees. Moreover, Sage Life will allow the Owners, with respect to shares substituted, to transfer the Contract values held in the subaccount invested in the Substituting Portfolio for a period of 31 days without collecting transfer fees or imposing any additional restrictions on transfers. Moreover, such a transfer will not be counted as a transfer request under any contractual provisions of the Contracts that may limit the number of transfers that may be made without charge.

12. In anticipation of the filing of the Application, the Applicants have supplemented the prospectuses for the Contracts to reflect the proposed Substitution. The supplement was mailed to Owners on December 27, 2002. Within five days after the Substitution, Sage Life will send to Owners written notice of the Substitution (the ''Notice''), identifying the shares of the Replaced Portfolios that have been eliminated and the shares of the Substituting Portfolios that have been substituted. Sage Life will include in such mailing the applicable prospectus supplement for the Contracts of the Variable Account Applicants describing the Substitution. In addition, Sage Life will provide a copy of the prospectuses for the Substituting Portfolios with the Notice. Owners will be advised in the Notice that for a period of 31 days from the mailing of the Notice, Owners may transfer all assets, as substituted, to any other available subaccount without limitation or transfer charge (the ''Free Transfer Period'').

*Applicants' Legal Analysis*

1. Section 26(c) (formerly, section 26 (b)) of the 1940 Act provides that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the [Commission] shall have approved such substitution.'' Section 26(b) of the 1940 Act (now section 26 (c)) was enacted as part of the Investment Company Act Amendments of 1970. Prior to the enactment of these amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five (5) days after the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted security, recommended that section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval. The Commission will issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants assert that the purposes, terms and conditions of the substitution are consistent with the principles and purposes of section 26(c) and do not entail any of the abuses that section 26(c) is designed to prevent. Applicants represent that the Substitution will generally result in lower expense ratios for the Owners that have allocated their Contract values to the Substituting Portfolios or, in the case of the S&P 500® Equity Index Fund substitution, Applicants will provide the dollar value necessary to offset any differential in the expense ratios of the substituting and replaced funds. In addition, to the extent an Owner does not wish to participate in the Substitution, he or she is free to transfer to any other option available under the relevant Contract prior to the Substitution and within 31 days after the date of the Notice for the Substitution without any transfer fee. As discussed below, Owners will be substituted into a Substituting Portfolio whose investment objectives are substantially similar to those of the Replaced Portfolio.

3. Applicants submit that the Substitution does not present the type of costly forced redemption or other harms that section 26(c) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

(a) The Substitution will continue to fulfill Owners' objectives and risk expectations, because the investment objectives of each Substituting Portfolio are similar to those of each Replaced Portfolio;

(b) After receipt of the Notice informing an Owner of the Substitution, an Owner may request that his or her assets be reallocated to another subaccount at any time during the Free Transfer Period. The Free Transfer Period provides sufficient time for Owners to consider their reinvestment options;

(c) The Substitution will be at net asset value of the respective shares, without the imposition of any transfer or similar charge;

(d) Neither the Owners, the Replaced Portfolios nor the Substituting Portfolios will bear any costs of the Substitution, including any brokerage fees relating to the Substitution, whether incurred on the date of the Substitution or on any prior date, and accordingly, the Substitution will have no impact on the Owners' Contract values;

(e) The Substitution will in no way alter the contractual obligations of Sage Life or the rights and privileges of Owners under the Contracts;

(f) The Substitution will in no way alter the tax benefits to Owners; and

(g) The Substitution is expected to confer certain economic benefits on Owners by virtue of enhanced asset size and lower expenses, as described below.

4. The prospectuses by which the Contracts are offered state that Sage Life has, subject to the requirements of the 1940 Act, the right to substitute the shares of any underlying registered investment company held by the Variable Account Applicants with shares of another registered investment company. The Applicants represent that each Substituting Portfolio is an appropriate replacement for each Replaced Portfolio and an appropriate investment vehicle for the Owners because they share similar investment objectives. The investment objectives, strategies and risks of each Replaced Portfolio and of each Substituting Portfolio are below.

| Replaced portfolio | Substituting portfolio |
|---|---|
| **S&P 500® Equity Index Fund** | **AIM V.I. Premier Equity Fund (Series I Shares)** |
| The investment objective of the S&P 500® Equity Index Fund (the ''S&P 500 Fund'') is to match as closely as possible, the performance of the Standard & Poor's 500 Composite Stock Price Index (''S&P 500'') before deduction of Fund expenses. The S&P 500 emphasizes stocks of large U.S. companies. | The investment objective of the AIM V.I. Premier Equity Fund is to achieve long-term growth of capital. Income is a secondary objective. |
| The S&P 500 Fund will invest at least 80% of its assets in the stocks of companies included in the S&P 500, selected on the basis of computer-generated statistical data. The Fund generally intends to allocate its investments among common stock in approximately the same proportions as they are represented in the S&P 500. | The Fund seeks to meet its objectives by investing, normally, at least 80% of its net assets, plus the amount of any borrowings for investment purposes, in equity securities, including convertible securities. The Fund also may invest up to 25% of its total assets in foreign securities. |
| | The benchmark for the AIM V.I. Premier Equity Fund is the S&P 500 Index. |
| *Market Risk:* Because the S&P 500 Fund invests primarily in stocks, it is subject to stock market risk. | *Market Risk:* In that 80% of its assets are normally invested in equity securities, the Fund is subject to stock market risk. |
| *Cash Flow Risk:* The S&P 500 Fund's ability to meet its goal depends to some extent on the cash flow in and out of the Fund in that when a shareholder buys into the Fund, the Fund generally has to buy or sell stocks in the portfolio. | *Cash Flow Risk:* N/A. |
| *Modeling Risk:* When the Fund cannot purchase all stocks in the S&P 500 Index, it purchases a representative sample of the stocks listed in the Index. If the stocks that the Fund does not own outperform those that it does, the Fund's results will trail the Index. | *Modeling Risk:* N/A. |
| *Foreign Securities Risk:* Not a principal risk factor ..... | Foreign Securities Risk: In that the Fund may invest up to 25% of its assets in foreign securities, the Fund has, as a principal investment risk, foreign securities risk. |
| *Nasdaq-100 Index® Fund* | **Oppenheimer Capital Appreciation Fund/VA** |
| The investment objective of the Nasdaq-100 Index® Fund (the ''Nasdaq-100 Fund'') is to provide investment returns that correspond to the performance of the Nasdaq-100 before the deduction of Fund expenses. | The investment objective of the Oppenheimer Capital Appreciation Fund/VA is capital appreciation. It invests in securities of well-known, established companies. |
| The Nasdaq-100 Fund will invest at least 80% of its assets in stocks of companies included in the Nasdaq-100, selected on the basis of computer-generated statistical data. The Nasdaq-100 is a modified capitalization weighted index composed of 100 of the largest non-financial domestic and international companies listed on the National Market tier of The Nasdaq Stock MarketK (the ''Nasdaq''). All companies listed on the Nasdaq-100 have a minimum market capitalization of $500 million and an average daily trading volume of at least 100,000 shares. | The Fund invests mainly in common stocks, of ''growth companies.'' These may be newer companies or established companies of any capitalization range that the portfolio manager believes may appreciate in value over the long term. The Fund currently focuses mainly on mid-cap and large-cap domestic companies, but buys foreign stocks as well. |
| | The benchmark for the Fund is the S&P 5000 Index. |
| *Market Risk:* Because the Nasdaq-100 Fund invests primarily in stocks, it is subject to stock market risk. | *Market Risk:* Since the Fund invests primarily in equity securities, it is subject to stock market risk. |
| *Cash Flow Risk:* The Nasdaq-100 Fund's ability to meet its goal depends to some extent on the cash flow in and out of the Fund in that when a shareholder buys into the Fund, the Fund generally has to buy or sell stocks in the portfolio. Changes in the Fund's cash flow affect how closely its portfolio mirrors the index. | *Cash Flow Risk:* N/A. |
| *Modeling Risk:* When the Fund cannot purchase all stocks in the Nasdaq-100 Index, it purchases a representative sample of the stocks listed in the index. If the stocks that the Fund does not own outperform those that it does, the Fund's results will trail its index. | *Modeling Risk:* N/A. |
| *Foreign Securities Risk:* Because the Nasdaq-100 Fund invests in non-U.S. dollar-denominated equity securities, it is subject to the risks of international investing. | *Foreign Securities Risk:* In that the Fund may invest in foreign securities, it is subject to foreign securities risk. |
| *Industry and Sector Focus Risk:* Not a principal risk factor ..... | *Industry and Sector Focus Risk:* The prices of stocks of issuers in a particular industry or sector my go up and down in response to changes in economic condition, government regulations, availability of basic resources or supplies, or other events that affect that industry or sector more than others. |
| *Growth Stock Risk:* In that the Nasdaq-100 Fund may invest in stocks of growth companies which may be more volatile than stocks of larger, more established companies, the Fund does have this risk. | *Growth Stock Risk:* Stocks of growth companies, particularly newer companies, may be more volatile than stocks of larger, more established companies. |
| **All-Cap Growth Fund** | **Oppenheimer Capital Appreciation Fund/VA** |
| The investment objective of the All-Cap Growth Fund is long-term capital appreciation. | The investment objective of the Oppenheimer Capital Appreciation Fund/VA is capital appreciation. It invests in securities of well-known, established companies. |
| The All-Cap Growth Fund seeks to achieve its objective by investing, under normal conditions, at least 80% of its assets in a diversified portfolio of common stocks of companies which have one or more of the following characteristics: Projected earnings growth and return on equity greater than those of the S&P 500 average; dominance in their industries or market niches; the ability to create and sustain a competitive advantage; superior management teams; and high profit margins. | The Fund invests mainly in common stocks of ''growth companies.'' These may be newer companies or established companies of any capitalization range that the portfolio manager believes may appreciate in value over the long term. The Fund currently focuses mainly on mid-cap and large-cap domestic companies, but buys foreign stocks as well. |
| | The benchmark for the Fund is the S&P 500 Index. |

| Replaced portfolio | Substituting portfolio |
|---|---|
| *Market Risk:* Because the All-Cap Growth Fund invests primarily in stocks, it is subject to stock market risk. | *Market Risk:* Because the Fund invests primarily in stocks of U.S. companies, the value of the Fund's portfolio will be affected by changes in the stock markets. |
| *Mid-Cap and Small-Cap Company Risk:* Mid-cap and small-cap companies often have narrower markets and more limited managerial and financial resources than larger, more established companies. | *Company Risk:* Because the Fund invests in mid-cap companies, the risks attendant thereto are applicable. |
| *Foreign Issuer Risk:* Because the Fund may invest in non-U.S. dollar-denominated equity securities, the Fund is subject to the risks of international investing. | *Foreign Issuer Risk:* The change in value of a foreign currency against the U.S. dollar will result in a change in the U.S. dollar value of securities denominated in the foreign currency. |
| *Growth Stock Risk:* Stocks of growth companies, particularly newer companies, may be more volatile than stocks of larger, more established companies. | *Growth Stock Risk:* Stocks of growth companies, particularly newer companies, may be more volatile than stocks of larger, more established companies. |
| *Industry and Sector Focus Risk:* Not a principal risk factor ..... | *Industry and Sector Focus Risk:* The prices of stocks of issuers in a particular industry or sector may go up and down in response to changes in economic condition, government regulations, availability of basic resources or supplies, or other events that affect that industry or sector more than others. |
| **Money Market Fund** | **AIM V.I. Money Market Fund (Series I Shares)** |
| The investment objective of the Money Market Fund is high current income consistent with the preservation of capital and liquidity. | The investment objective of the AIM V.I. Money Market Fund is to provide as high a level of current income as is consistent with the preservation of capital and liquidity. |
| The Money Market Fund seeks to achieve its objective by investing in high-quality short-term money market instruments. The Fund maintains an average dollar-weighted portfolio maturity of 90 days or less. | The Fund seeks to meet its objectives by investing only in high-quality U.S. dollar-denominated short-term obligations. |
| The Money Market Fund may invest in dollar-denoted foreign securities issued by foreign banks and companies. | The Fund may invest up to 50% of its total assets in U.S. dollar-denominated securities of foreign issuers. The Fund may invest up to 100% of its total assets in obligations issued by banks. |
| *Money Market Risks:* Although the Fund seeks to preserve the value of an owner's investment at $1.00 per share, that value is not guaranteed and it is still possible to lose money by investing in the Fund. The Fund invests mostly in short-term debt securities and rising interest rates cause the prices of debt securities to decrease. If the Fund invests a significant portion of its assets in debt securities and interests rates rise, then the value of the Fund's portfolio may decline. The value of the debt securities in which the Fund invests is affected by the issuer's ability to pay principal and interest on time. The failure of an issuer to pay an obligation in a timely manner may adversely affect the value of an investment in the Fund. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. | *Money Market Risks:* Although the Fund seeks to preserve the value of an owner's investment at $1.00 per share, that value is not guaranteed and it is still possible to lose money by investing in the Fund. The Fund invests mostly in short-term debt securities and rising interest rates cause the prices of debt securities to decrease. If the Fund invests a significant portion of its assets in debt securities and interest rates rise, then the value of the Fund's portfolio may decline. The value of the debt securities in which the Fund invests is affected by the issuer's ability to pay principal and interest on time. The failure of an issuer to pay an obligation in a timely manner may adversely affect the value of an investment in the Fund. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. |

5. The annual operating expenses of each Replaced Portfolio and each Substituting Portfolio as a percentage of average daily net assets are as follows: [4]

[In percentages]

| | Management fee | Distribution and service fee (12b–1) | Other expenses | Total expenses (before reimbursement and/or fee waivers if applicable) | Total expenses (after fee waivers and/or reimbursement if applicable) |
|---|---|---|---|---|---|
| Replaced Portfolio: S&P 500® Equity Index Fund ..... | 0.38 | 0 | 0.17 | 1.23 | 0.55 |
| Substituting Portfolio: AIM V.I. Premier Equity Fund (Series I Shares). | 0.61 | 0 | 0.24 | 0.85 | 0.85 |
| Replaced Portfolio: Nasdaq-100 Index® Fund ..... | 0.80 | 0 | 0.05 | 1.53 | 0.85 |
| Substituting Portfolio: Oppenheimer Capital Appreciation Fund/VA. | 0.64 | N/A | 0.02 | 0.66 | 0.66 |
| Replaced Portfolio: All-Cap Growth Fund ..... | 0.94 | 0.0 | 0.11 | 1.77 | 1.10 |
| Substituting Portfolio: Oppenheimer Capital Appreciation Fund/VA. | 0.64 | N/A | 0.02 | 0.66 | 0.66 |
| Replaced Portfolio: Money Market Fund ..... | 0.48 | N/A | 0.17 | 1.03 | 0.65 |
| Substituting Portfolio: AIM Money Market Fund ..... | 0.40 | N/A (Series I Shares) | l0.27 | 0.67 | 0.67 |

[4] The expenses shown above are for the year ended December 31, 2002.

6. Management fees before waivers for the Sage Life Portfolios are: .55% for the S&P 500® Index Fund; .85% for the Nasdaq—100 Index® Fund; 1.10% for the All-Cap Growth Fund; and .65% for the Money Market Fund. Sage Advisors, with respect to the Sage Trust, has entered into an expense limitation contract with the Portfolios, under which it will limit expenses of the Portfolios, excluding interest, taxes, brokerage and extraordinary expenses through May 1, 2003. Fees waived and/or reimbursed by Sage Advisors may vary in order to achieve such contractually obligated net fund operating expenses. Any waiver or reimbursement by Sage Advisors is subject to reimbursement within the first three (3) years of a Portfolio's operation, to the extent such reimbursements by the Portfolio would not cause total operating expenses to exceed any current net fund operating expenses. Rule 12b–1 fees, if any, waived by the distributor are not subject to reimbursement. A rule 12b–1 Plan (the ''Plan'') has been adopted by each Sage Trust Fund (except the Money Market Fund), pursuant to which up to 0.25% may be deducted from Fund assets. No Plan payments have been made to date, and none are anticipated to be made in the future.

7. Accordingly, Applicants represent that the Substituting Portfolios are appropriate investment vehicles for Owners who have allocated values to the Replaced Portfolios and that the Substitution will be consistent with Owners' investment objectives.

8. Since the Sage Trust's inception, Sage Advisors has voluntarily reimbursed certain operating expenses of each Portfolio of the Sage Trust. However, Sage Advisors has determined that it will no longer reimburse expenses of the Sage Trust effective May 1, 2003.

9. Applicants represent that the Oppenheimer Capital Appreciation Fund/VA, the Substituting Portfolio for the Nasdaq—100 Index Fund and the All-Cap Growth Fund, is expected to have substantially lower annual expense ratios than either of these two Replaced Portfolios. Applicants also represent that AIM V.I. Money Market Fund, the Substituting Portfolio for the Money Market Fund, is expected to have approximately the same annual expense ratio as the Money Market Fund. In addition, Applicants represent that the AIM V.I. Premier Equity Fund, the Substituting Portfolio for the S&P 500 Equity Index Fund, also is expected to have a higher annual expense ratio than the S&P 500 Equity Index Fund. However, Applicants represent that the anticipated expense differential will be offset for the first year after the Substitution by the monies that will be contributed to Owners' accounts by Sage Life.

10. In addition, Applicants represent that, to the extent an Owner does not wish to participate in the Substitution, he or she is free (and has been since December 26, 2002) to transfer to any other option available under the relevant Contract for the period prior to the Substitution and through 31 days after the date of the Notice for the Substitution without any transfer fee. Applicants assert that Owners will be substituted into a Substituting Portfolio whose investment objectives are similar to those of the Replaced Portfolio.

11. Sage Life represents that it will not receive, for 3 years from the date of the substitutions, any direct or indirect benefits from the Substituting Portfolios, their advisors or underwriters (or their affiliates), in connection with assets representing Contract values of Contracts affected by the substitutions, at a higher rate than it had received from the Replaced Portfolios, their advisors or underwriter (or their affiliates), including without limitation 12b–1 shareholder service, administration or other service fees, revenue sharing or other arrangements in connection with such assets. Applicants represent that the substitutions and the selection of the Replacement Portfolios were not motivated by any financial consideration paid or to be paid to Sage Life or its affiliates by the Replacement Portfolios, their advisors or underwriters, or their respective affiliates.

12. Applicants represent that there will be no increase in the Contract or Variable Account charges from their current levels for a period of at least two years from the date of the Substitution.

13. For the year ended December 31, 2002, the total net expense ratio of the AIM V.I. Premier Equity Fund was .30% higher than that of the S&P 500® Equity Index Fund. In similar circumstances, other applicants seeking substitution orders have undertaken to cap expenses of the substituting funds for a period of one year at the then current expense levels of the replaced funds or, in cases of unaffiliated substituting funds, to reduce separate account charges for a period of one year to the extent necessary to offset the difference in expense ratios between the substituting and replaced funds. Sage Life, however, because of its financial condition as described above, represents that it is unable to follow this approach in that it has neither the administrative systems capabilities nor the necessary personnel available to it to implement the expense cap. However, Sage Life has undertaken to give all contract owners in the S&P 500® Equity Index Fund, as of the date of Substitution, a sum of money that would be contributed to their accounts that is expected to make up for the 0.30% expense differential that exists between the S&P 500® Equity Index Fund and the AIM Premier Equity Fund.

14. Applicants will assume a 50% return on investment for the S&P 500® Equity Fund subaccount for the 12 month period commencing with the date of the substitution. On the date of the substitution, Sage Life will contribute to the subaccount an amount equal to 0.30% of the resulting subaccount value. For example, as of the date of the Substitution, Applicants anticipate that there will be approximately 190 contract owners involving approximately $3 million in assets in the S&P 500® Equity Index Fund. The assumed 50% return would mean that the $3 million sub-account would be worth $4.5 million at the end of the 12 month period following the date of the Substitution. Under this example, for purposes of adding funds to the sub-accounts of the Variable Accounts and, therefore by definition, to each owner's account, Sage Life would make the following calculation: $4.5 million × .30% = $13,500.

Thus, on the date of the Substitution, based on current projected assets, $13,500 would be added on a *pro-rata* basis to the contract owners' accounts. Applicants represent that the calculation of the 50% return will be based on whatever the actual assets are of the sub-account on the date of the Substitution.

15. The benchmark for the AIM Premier Equity Fund is the S&P 500 Index. Given the historical market return averages, Applicant believes that using the 50% return is more than fair, and, in fact, should result in a windfall to contract owners. Further, those owners that transfer out of the AIM Premier Equity Fund prior to one full year from the date of Substitution will have received more than they would otherwise have been entitled.

16. Therefore, with respect to the S&P 500® Equity Index Fund substitution, Sage Life represents that it will add monies to the S&P 500 sub-accounts of the Variable Accounts in the manner described in the Application which will offset the 0.30% expense differential between the S&P 500 Equity Index Fund and the AIM Premier Equity Fund.

17. Based on the foregoing, Applicants represent that the Substitution will generally result in

lower expense ratios for the Owners that have allocated their Contract values to the Substituting Portfolios or, in the case of the S&P 500® Equity Index Fund substitution, Sage Life will provide the dollar value necessary to offset any differential in the expense ratios of the substituting and replaced funds.

*Conclusion*

Section 26(c) of the 1940 Act, in pertinent part, provides that the Commission may issue an order approving the substitution requested by the Applicants provided the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants submit that, for the reasons stated in the Application, their exemptive requests meet the standards set out in section 26(c) and that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–11315 Filed 5–6–03; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47778; File No. S7–10–03]**

### Notice of Solicitation of Public Views Regarding Possible Changes to the Proxy Rules

On April 14, 2003, the Commission issued Press Release No. 2003–46 announcing that it has directed the Division of Corporation Finance to formulate possible changes in the proxy rules and regulations and their interpretations regarding procedures for the election of corporate directors. As stated in that Press Release, this review will address the following topics:

- Shareholder proposals;
- The corporate director nomination process;
- Elections of directors;
- The solicitation of proxies for director elections;
- Contests for corporate control; and
- The disclosure and other requirements imposed on large shareholders and groups of shareholders.

As part of this process, the Commission has asked the Division to consult with all interested parties, including representatives of pension funds, shareholder advocacy groups, and representatives from the business and legal communities. The Commission has requested that the Division provide its recommendations to the Commission by July 15 of this year.

We solicit public views on the topics listed above to assist the Division in formulating its recommendations. We are not soliciting responses to or comments on a particular set of inquiries but will consider all communications received. Any proposed rulemaking on these topics that the Commission may determine to publish in the future will be subject to separate notice and comment procedures.

If you wish to send us your views, please submit them by hard copy or e-mail, but not by both methods on or before June 13, 2003. We strongly encourage electronic submissions. You may submit your written views electronically at the following electronic mail address: *rule-comments@sec.gov.* We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions so you should submit only information that you wish to make available publicly. Views communicated in hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File No. S7–10–03. This file number should be included in the subject line if electronic mail is used. Hard copy submissions will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronic submissions will be posted on the Commission's Internet Web site (*http://www.sec.gov*).

For additional information, please contact Lillian Cummins, Special Counsel, or Grace Lee, Special Counsel, at (202) 942–2900, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

By the Commission.

Dated: May 1, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–11316 Filed 5–6–03; 8:45 am]

**BILLING CODE 8010–01–P**

## DEPARTMENT OF STATE

**[Public Notice 4357]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Crossing the Channel: British and French Painting in the Age of Romanticism''

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Crossing the Channel: British and French Painting in the Age of Romanticism,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Minneapolis Institute of Arts from on or about June 8, 2003 until on or about September 7, 2003, at the Metropolitan Museum of Art from on or about October 6, 2003 until on or about January 4, 2003, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 29, 2003.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 03–11351 Filed 5–6–03; 8:45 am]

**BILLING CODE 4710–08–P**

## DEPARTMENT OF STATE

**[Public Notice 4358]**

### Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to Basque Fatherland and Liberty (ETA)

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I hereby determine that ETA uses or has used as aliases the names Batasuna, Euskal Herritarrok, and Herri Batasuna. I hereby amend the October 31, 2001, designation of Basque Fatherland and Liberty (ETA and other aliases) to add the following names as aliases of ETA:

Batasuna;
Euskal Herritarrok;
Herri Batasuna.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously'', I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: April 30, 2003.

**Colin L. Powell,**

*Secretary of State, Department of State.*

[FR Doc. 03–11462 Filed 5–6–03; 5:00 pm]

**BILLING CODE 4710–10–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Trade Policy Staff Committee; Invitation for Non-Governmental Organizations, Corporate Sponsors and Private Foundations To Volunteer Trade Capacity Building Assistance in Support of the U.S.-Central America Free Trade Agreement

**AGENCY:** Office of the United States Trade Representative, United States Agency for International Development.

**ACTION:** Request for submissions to volunteer trade capacity building assistance.

**SUMMARY:** The United States aims to attract additional resource partners that can legitimately contribute to the trade capacity building efforts in support of the US-Central America Free Trade Agreement (CAFTA). The TPSC gives notice that the Office of the United States Trade Representative and the United States Agency for International Development seek to expand the circle of resource partners to non-governmental organizations (NGOs), corporate sponsors and private foundations that can volunteer to conduct trade capacity building efforts in support of the CAFTA subject to (1) the priorities set by Central American countries in their national strategies; (2) the coordination efforts of the U.S. interagency trade capacity working group to, among other reasons, promote transparency; and (3) consistency with U.S. government policy. Interested parties should present a brief description of their potential contribution.

**DATES:** This notice recommends initial expressions be sent before June 15, 2003, although the invitation is open throughout the CAFTA negotiations.

**ADDRESSES:** *Submissions by electronic mail: FR0074@ustr.gov* (written comments). *Submissions by facsimile:* Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at 202/395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

**FOR FURTHER INFORMATION CONTACT:** For procedural questions, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions should be addressed to Tracy Quilter, Director for Trade Capacity Building, Office of the USTR, telephone (202) 395–2839.

**SUPPLEMENTARY INFORMATION:** The United States has entered into free trade negotiations with five Central American countries: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. The agreement seeks to eliminate tariffs and other barriers to trade in goods, agriculture, services, and investment between the United States and the five Central American countries. The participants will seek to complete the negotiations by December 2003.

Nine rounds of negotiations are planned in 2003. To date, three have occurred. Negotiating groups cover the following topics: market access; investment and services; government procurement and intellectual property; labor and environment; and institutional issues such as dispute settlement. A non-negotiating cooperative group on trade capacity building (''TCB Working Group'') has been meeting in parallel with the negotiating groups.

The TCB Working Group aims to address, to the extent possible, the needs of the Central American countries during the negotiation, throughout implementation of the agreement and during the country's transition to free trade. The U.S. government (USG), in concert with regional institutions such as the Inter-American Development Bank, the World Bank, the Organization of American States, the U.N. Economic Commission for Latin America and the Central American Bank for Economic Integration, has assisted countries in completing national trade capacity building strategies to guide the work of the TCB Working Group. These strategies are intended to identify, define and prioritize each country's needs. The strategies can be found on USTR's Internet server (*http://www.ustr.gov*).

The United States and the Central American countries aim to attract additional resource partners that can legitimately contribute to the trade capacity building efforts in support of the CAFTA. The TPSC gives notice that USTR and USAID seek to expand the circle of resource partners to NGOs, corporate sponsors and private foundations that can volunteer to conduct trade capacity building efforts in support of the CAFTA subject to (1) the priorities set by Central American countries in their national strategies; (2) the coordination efforts of the U.S. interagency trade capacity working group; and (3) consistency with USG policy. The parties seek resource partners that are able to fund all or most of the technical assistance for the trade capacity building support that they propose to deliver in the context of these trade initiatives. Interested parties should present a brief description of their potential contribution.

Resource partners that volunteer to participate based on their willingness to consider self-funded technical assistance or other trade capacity building services in response to the needs identified by the Central Americans in the CAFTA process may be invited to brief the TCB Working Group or donors on their interests and capabilities.

*Submitting Comments:* To ensure prompt and full consideration of responses, the TPSC strongly recommends that interested persons make submissions by electronic mail to the following e-mail address: *FR0074@ustr.gov*. Persons making submissions by e-mail should use the

following subject line: ''CAFTA TCB Assistance.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 p.m. and 1 p.m.–4 p.m., Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

General information concerning the Office of the USTR may be obtained by accessing its Internet server (*http://www.ustr.gov*). General information concerning the United States Agency for International Development (USAID) may be obtained by accessing its Internet server (*http://www.usaid.gov*).

**Carmen Suro-Bredie,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 03–11379 Filed 5–6–03; 8:45 am]

**BILLING CODE 3190–01–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Trade Policy Staff Committee; Request for Public Comment on Review of Employment Impact of United States—Southern African Customs Union Free Trade Agreement

**AGENCY:** Office of the United States Trade Representative, Department of Labor.

**ACTION:** Request for comments.

**SUMMARY:** The Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of the proposed U.S.-Southern African Customs Union Free Trade Agreement (FTA) on United States employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

**DATES:** Public comments should be received no later than June 6, 2003.

**ADDRESSES:** Submissions by electronic mail: FR0075@ustr.gov. Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW, Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning the employment impact review should be addressed to Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 693–4883; or William Clatanoff, Assistant U.S. Trade Representative for Labor, telephone (202) 395–6120.

**SUPPLEMENTARY INFORMATION:**

### 1. Background Information

On November 4, 2002, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified Congress of the President's intent to enter into trade negotiations with the member nations of the Southern African Customs Union (SACU): Botswana, Lesotho, Namibia, South Africa, and Swaziland. Ambassador Zoellick outlined specific U.S. objectives for these negotiations in the notification letters to Congress. Copies of the letters are available at *http://www.ustr.gov/releases/2002/11/2002–11–04–SACU–byrd.PDF* and *http://www.ustr.gov/releases/2002/11/2002–11–04–SACU–hastert.PDF*.

The TPSC invited the public to provide written comments and/or oral testimony at a public hearing that took place on December 16, 2002, to assist USTR in amplifying and clarifying negotiating objectives for the proposed FTA and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement (67 FR 69295).

A free trade agreement with SACU would deepen economic and political ties to sub-Saharan Africa and lend momentum to development efforts for the region. SACU is the largest U.S. export market in sub-Saharan Africa, accounting for approximately $3.1 billion in exports in 2001. Total two-way trade in goods between the United States and the member countries of SACU totaled $7.9 billion in 2001. Leading U.S. exports to SACU include machinery and equipment, aircraft, vehicles, chemicals, plastics and agricultural products. Leading U.S. imports from SACU include vehicles, minerals, precious stones and metals, iron and steel products, and apparel.

### 2. Employment Impact Review

Section 2102(c)(5) of the Bipartisan Trade Promotion Authority Act of 2002, 19 U.S.C. 3802(c)(5), directs the President to Areview the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public.'' USTR and the Department of Labor will conduct the employment reviews through the TPSC.

The employment impact review will be based on the following elements, which are modeled to the extent appropriate after those in EO 13141. The review will be: (1) Written; (2) initiated through a **Federal Register** notice soliciting public comment and information on the employment impact of the FTA in the United States; (3) made available to the public in draft form for public comment, to the extent practicable; and (4) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or

regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

**3. Requirements for Submissions**

To ensure prompt and full consideration of responses, the TPSC strongly recommends that interested persons submit comments by electronic mail to the following e-mail address: *FR0075@ustr.gov.* Persons making submissions by e-mail should use the following subject line: SACU Employment Review.'' Documents should be submitted in WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW, Washington, D.C. 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m–12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

**Carmen Suro-Bredie,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 03–11378 Filed 5–6–03; 8:45 am]

BILLING CODE 3190–01–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Order Soliciting Community Proposals

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order Soliciting Community Proposals (Order 2003–4–22)Docket OST–2003–15065.

**SUMMARY:** The Department of Transportation is soliciting proposals from communities or consortia of communities interested in receiving a grant under the Small Community Air Service Development Pilot Program. The full text of the Department's order is attached to this document.

**DATES:** Grant Proposals should be submitted no later than June 30, 2003.

**ADDRESSES:** Interested parties should submit an original and four copies of their proposals bearing the title ''Proposal under the Small Community Air Service Development Pilot Program, Docket OST–2003–15065,'' as well as the name of the applicant community or consortium of communities, and the legal sponsor, to Dockets Operations and Media Management, M–30, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Teresa Bingham, Associate Director, Office of Aviation Analysis for the Small Community Air Service Development Pilot Program, 400 7th Street SW., Washington, DC 20590, (202) 366–1032.

Dated: April 29, 2003.

**Read C. Van de Water,**

*Assistant Secretary for Aviation and International Affairs.*

### Small Community Air Service Development Pilot Program Under 49 U.S.C. 41743 et seq.

[Docket OST–2003–15065]

### Summary

By this order, the Department invites proposals from communities and/or consortia of communities interested in obtaining a Federal grant under the Small Community Air Service Development Pilot Program (Pilot Program) to address air service and air fare problems at their communities. Proposals should be submitted no later than June 30, 2003.

### Background

On April 5, 2000, the President signed the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21), Public Law 106–181. Among other things, the statute established a new pilot program designed to help smaller communities enhance their air service. The statute directs the Secretary of Transportation to assist communities in developing projects that will improve their access to the National air transportation system through public-private partnerships, and to help communities overcome factors that might be inhibiting improvements in their current air service.[1]

Specifically, the law authorizes the Secretary to provide financial assistance (direct financial assistance to an air carrier is limited to three years) to as many as 40 communities nationwide in each year for which program funds are appropriated, though no more than four of those may be from the same state.[2] Communities that are eligible to participate in the grant program are those communities that are served by an airport that was not larger than a small hub airport for calendar year 1997, as defined by 49 U.S.C. 41743(c)(1), and had insufficient air service or unreasonably high air fares.[3] Communities that currently do not have air service qualify, but the airport where service would be provided must meet the certification requirements of the Federal Aviation Administration for commercial airports. While no community is required to contribute a portion or share of the cost of this program, the law directs the Secretary to give priority to those communities where: (a) Average air fares are higher than the air fares for all communities; (b) a portion of the cost of the activity contemplated by the community is provided from local, *non-airport*-revenue sources; (c) a public-private partnership has been or will be established to facilitate air carrier service to the public; and, (d) improved service will bring the material benefits of scheduled air transportation to a

[1] See Appendix A for the actual text of the authorizing statute.

[2] The statute specifies that a consortium of communities should be considered as a single entity; therefore, throughout this order we use ''community'' to include consortia.

[3] A small hub is defined as a community that has at least 0.05%, but less than 0.25%, of the annual passenger boardings in the United States.

broad section of the traveling public, including businesses, educational institutions, and other enterprises whose access to the National air transportation system is limited.

The statute authorized the Pilot Program for a period of three years beginning in fiscal year 2001. No funds were appropriated for the first year the program was authorized, but in the Department's FY 2002 appropriation bill, Public Law 107–87, Congress appropriated $20 million for the program, to remain available until expended. After soliciting proposals from interested communities, in June 2002, the Department made grant awards to 40 of the 180 communities that had submitted grant proposals. Order 2002–6–14. Those awards were subject to the communities completing a formal grant agreement with the Department for implementation of their grant projects. Two grant recipients did not execute agreements with the Department, and by Order 2002–12–16, the Department reallocated those grant funds to two other communities.[4]

On February 20, 2003, as part of the Department's FY 2003 appropriations bill, Public Law 108–7, Congress appropriated another $20 million for the program for FY 2003, also to remain available until expended. Given the overall limitation in the AIR–21 legislation regarding the total number of communities that could participate in the program, it was apparent that the Department could not use the appropriation for grants to additional communities without additional legislative authorization. On April 16, as a provision of the Emergency Wartime Supplemental Appropriations Act, 2003, Public Law 108–11, Congress amended the AIR–21 legislation to clarify that the numerical community limitations in the law were to be applied on a per year basis. Therefore, the Department is now in a position to solicit proposals from interested communities.

**Community Proposals**

This is the second year that the Department is making grant awards under this program. There was an extraordinary response to the Pilot Program last year, with 180 applications filed. It is still too soon to evaluate the results of the projects authorized under the fiscal year 2002 grant awards. Nonetheless, we believe that the application process worked very well. Therefore, we generally intend to follow the same approach as we did last year and to provide communities as much flexibility as possible in developing their grant proposals. In this regard, there are a number of aspects about this program that we noted in last year's request for proposals that are important and we believe would be beneficial if they are repeated here.[5] Also, we clarify some issues that arose as communities were developing their proposals last year, as well as others based on our experience in reviewing those proposals and making the first grant awards.

**Types of Proposals/Application Contents**

The law is very general about how program funding can be used. Moreover, we recognize that each community's circumstances may be different, and that each community needs some latitude in identifying its own objectives and developing strategies for accomplishing them. What should remain clear, however, is that program funding is intended to improve air service to those communities that are not receiving sufficient air service or are experiencing unreasonably high air fares, and not to shift existing costs from the local or state level to the Federal level.

There are many ways that a community might enhance its current air service or attract new service, such as: By promoting awareness among residents of locally available service; by attracting a new carrier through revenue guarantees or operating cost offsets; by offering an incumbent carrier financial incentives to lower its fares, increase its frequencies, add new routes, or deploy more suitable aircraft, including upgrading its equipment from turboprops to regional jets; by combining traffic support from surrounding communities with regionalized service through one airport; or by providing local ground transportation service to improve the community's access to air service. The core objective of the Pilot Program is to secure enhancements that will be responsive to a community's air transportation/air fare needs and whose benefits can be expected to continue after the initial expenditures.

Consequently, we encourage communities to consider a wide range of initiatives in developing their proposals. At the same time, we will not entertain general, vague, or unsupported proposals. The more highly defined the proposal, the more likely it will receive favorable consideration. At a minimum, we expect proposals to address specifically the following:

- *A description of the community's existing air service,* including the carrier(s) providing service, service frequency, direct and connecting destinations offered, available fares, and equipment types.
- *A synopsis of the community's historical service* including destinations, traffic levels, service providers, and any extenuating factors that might have affected traffic in the past or that can be expected to influence service needs in the near to intermediate term.
- *An analysis of the community's air service needs or deficiencies,* including a comparison of fares currently offered locally with those offered at similar communities in similarly served markets.
- *A strategic plan for meeting those needs through the Pilot Program,* including the community's specific project goal and a realistic timetable for attaining that goal.[6] Proposals should clearly identify the target audience of each component of the proposed transportation initiative, including all advertising and promotional efforts. As noted above, we expect that self-sufficiency of the new or improved service will be an integral part of the community's goal. Applicants should keep in mind that this is the last year that the program has been authorized. There is no certainty that the program will be reauthorized beyond fiscal year 2003. Therefore, in developing projects and project goals, communities should recognize that additional funding in subsequent years might not be available. Completion of the proposed transportation initiative should not be dependent upon receiving grant awards in subsequent years. Moreover, many communities may find that a single grant award would be sufficient to finance their projects or resolve their service or fare issues. However, communities do not need to use the funding within a one-year period. Proposed projects may include activities that would extend over a multi-year period under the single grant award to the extent reasonable and practicable.

To the extent that a proposed project is dependent upon or relevant to completion of other Federally funded

[4] Pasco, Washington, and the consortium of Houghton and Pellston, Michigan, declined the grant offers. The funds were reallocated to Chico, California, and Telluride, Colorado.

[5] Order 2002–2–11, February 19, 2002, and published in the **Federal Register** on July 8, 2002; 67 FR 45168.

[6] The projected timetable will be an integral part of the grant agreements between the selected communities and the Department. Therefore, there is no advantage to a community in proposing an aggressive timetable that cannot be met and there may be disadvantages if the community finds that it cannot meet its timetable. Rather, communities should carefully consider all factors affecting implementation of their projects and develop realistic timeframes for achieving those objectives.

capital improvement projects, the community should provide a description of, and the construction time-line for, those projects.

• *A description of the public-private partnership, if there is one, or other sponsor, that will be responsible for the program developed at the local level.* The partnership or other sponsor can either be an existing organization or an entirely new one. If the sponsor is a public-private partnership, a public member of the organization must be identified as the community's sponsor to accept program reimbursements. In this regard, communities can designate only a single government entity as the legal sponsor, even if a consortium, for example, consists of two or more local government entities. Private organizations are not permissible sponsors to accept reimbursements under this program.[7]

• *An analysis of the funding necessary for implementation of the community's project, including the Federal and non-Federal contributions.* In calculating the non-Federal contribution, we will give less favorable consideration to contributions that simply continue already-existing programs or projects (*e.g.*, designating a portion of an airport's existing annual marketing budget); ideally, contributions should represent new financial resources devoted to attracting new or improved service, or addressing a specific high-fare or other service issue. Also, we will not consider in-kind trading (*e.g.*, reduced landing fees or terminal rent or non-cash transactions such as free advertising in exchange for reduced-fare travel) as part of the community's financial contribution to the project. As we have previously noted, in-kind trading is frequently hard to quantify and does not lend itself to comparison to proposals that include straight cash contributions. Of course, communities are free to include in-kind trading in their proposals. In fact, we encourage communities to offer in-kind inducements as an *extra* incentive to facilitate air service/fare improvements. These contributions, however, will be considered over and above what the community offers as a cash contribution to the proposed project.

There is no pre-established contribution level that is required of the applicant communities. Moreover, the law does not require communities to contribute toward a grant project. We emphasize, however, that a core objective of the Pilot Program is to promote community involvement in addressing air service/air fare issues through public/private partnerships. This includes not only participation in identifying and implementing the projects geared toward development of the community's air service, but, also, a financial commitment to achieve those developmental objectives. As a stakeholder in the process, the community gains greater control over the type, quality, and success of the air service initiatives that will best meet its needs, and a greater commitment towards achieving the stated goals. Furthermore, while we recognize that some communities may have greater financial resources available than others, we still expect there to be a direct relationship between the amount of Federal support that a community seeks and the amount that it is prepared to contribute toward the proposed initiative. The greater the Federal grant amount requested, the greater the amount that we would expect as the community's contribution.

Applicant communities should also keep in mind that, as part of the partnership between the Department and the community, we expect the community to meet its proposed financial contribution to the project. We believe that community participation with respect to all aspects, including the financial aspects, of the proposal is critical to the success of the authorized Pilot Program initiative. As with the fiscal year 2002 grant awards, receipt of the full Federal contribution awarded will thus be linked to the community's fulfillment of its financial contribution.

• *An explanation of how the community will provide assurances that its own funding contribution is spent in the manner proposed.*

• *Descriptions of how the community will monitor the success of the program* and how the community will identify critical milestones during the life of the program, including the need to modify, or discontinue funding if identified milestones cannot be met.

We will not dictate the format that applicants should use in submitting their applications, other than the guidance above concerning issues that we would like addressed in the community's application. The law provides considerable latitude to communities in developing their proposals and we do not want to stifle any innovation with a very strict format. However, given the high volume of applications received last year, and the delay in our ability to begin the grant process for this fiscal year, in this order, we are requiring applicants to submit Summary Information (attached as Appendix B to this order) at the beginning of their applications to assist our review of each proposal.

**Use of Funds**

The Pilot Program provides considerable flexibility in how funds can be used to implement a community's proposal. For example, grant funds can be used to cover the expenses of any new advertising or promotional activities that can reasonably be related to improving the scheduled air service to the community. Funds may also be used for any type of new media advertising or other promotional activities; for new studies designed to measure air service deficiencies, or to measure traffic loss or diversion to other communities; as well as for the employment or use of new, dedicated air service development staff on a long-term basis, advertising or public relations agencies, universities, and consulting firms. In addition, grant funds may also be used for financial incentives, including subsidy or revenue guarantees, to air carriers in conjunction with their provision of air service or the fare levels charged, or to ground service providers in providing access to air transportation services.[8] Use of the funds for air carrier subsidy is limited to a maximum period of three years.

As noted above, applicants will be expected to meet the financial contributions that they proposed toward their service proposals. To the extent that applicants may include the use of travel banks or travel pledges as financial incentives to service providers (air or surface), they should have confirmation and verification of such pledges or commitments *before* they include them in their proposed financial contributions.

While the statute does not preclude communities from including capital expenditures, such as terminal/runway improvements or airport equipment in their grant requests, we do not encourage communities to do so. If our experience this year mirrors that of last year, we will have many more proposals for Federal assistance than we can accommodate under the limitations of the statute. Moreover, the FAA's Airport Improvement Program (AIP) and Facilities and Equipment Program (F&E) are specifically intended for such purposes and capital improvement requests are more appropriately

[7] The community has the responsibility to ensure that the recipient of any funding has the legal authority under State and local laws to carry out all aspects of the grant.

[8] Qualified expenses are set forth in Office of Management and Budget Circular A–87. *See http://www.whitehouse.gov/omb/circulars/a0087/a0087.html.*

considered under those programs. Therefore, while we will not categorically disallow such items, the inclusion of capital improvements may put the community at a competitive disadvantage when compared to communities that have not included such items in their grant requests. Of course, applicants may separately pursue capital improvement projects under the AIP and F&E programs in conjunction with their grant proposals under the Pilot Program.[9]

The law does not exclude small communities that currently receive subsidized air service under the Essential Air Service (EAS) program from seeking funds under the Pilot Program. A number of EAS subsidized communities applied last year and the Department made grant awards to some of those applicants. We intend to again permit subsidized EAS communities to seek grant funds under this year's appropriation, and we will entertain requests that are directed toward increasing ridership on the subsidized service. Any proposal from an EAS community seeking funds for service to a point other than its EAS hub will be considered very carefully, weighing, and with particular emphasis on, the potential negative effect of such a project on the cost to the government for the already Federally subsidized service.

**Proposal Filing Date**

Proposals are due June 30, 2003. Given the limited time available to make these grant awards, proposals filed after that date will *not* be accepted. Interested communities should submit an original and four copies of their proposals, including the new Summary Information, bearing the title ''Proposal under the Small Community Air Service Development Pilot Program'' as well as the name of the community or consortium of communities applying, the legal sponsor, and the docket number as shown on the first page of this order, to Dockets Operations and Media Management, M–30, Room PL–401, Department of Transportation, 400 7th Street, SW, Washington DC 20590. Questions regarding the program or the filing of proposals should be directed to Teresa B. Bingham, Associate Director, Office of Aviation Analysis, for the Small Community Air Service Development Pilot Program at (202) 366–1032 or *terri.bingham@ost.dot.gov.*[10]

Applicants will be able to provide certain information relevant to their proposals on a confidential basis. Under the Department's regulations, such information is limited to commercial or financial information whose disclosure would either significantly harm the competitive position of a business or enterprise or make it more difficult for the Government to obtain similar information in the future. Applicants seeking confidential treatment of a portion of their applications should segregate the confidential material in a sealed envelope marked ''Confidential Submission of X (the applicant) in Docket OST–2003–15065'' and include with that material a request in the form of a motion seeking confidential treatment of the material under 14 CFR 302.12 (Rule 12) of the Department's regulations. The applicant should submit an original and four copies of this material. The confidential material should not be included in the original *or in any of the copies* of the applicant's proposal that are submitted to the Department, although those submissions should indicate clearly where the confidential material would have been inserted. Under our practice, if you invoke Rule 12, the confidential portion of your filing will be treated as confidential unless and until we decide otherwise. All confidential material must also be received by June 30, 2003.

We recognize that a number of communities that filed applications last year were not awarded grants. Some of these communities may still be interested in pursuing the proposals that they submitted last year with or without any modifications. Others may want to change their proposals, but make no changes to the historical or other information that was provided in their fiscal year 2002 proposals. Communities that are interested in doing so may adopt their 2002 applications by reference to the extent that the information in that application remains relevant. They should submit in this docket, by the due date, however, any necessary amendments and/or updates to their previous applications and include the additional information that is required in this order, including the Summary Information.

We anticipate that some communities that were awarded grants last year may also want to seek additional funds to expand projects authorized last year or for entirely new projects. Those communities are free to submit grant proposals under this year's appropriation. However, the funds for this program are very limited and the interest in the program has far exceeded both the funds available and the number of communities that can participate under the statute. The fact that the community has already received one grant under the Pilot Program would be considered carefully in comparing a new proposal with those of other applicant communities.

**Air Service Development Zone**

The statute provides that the Department will designate one of the communities awarded a grant as an Air Service Development Zone and work closely with the designated community or consortium on means to attract business to the areas surrounding the airport and to develop land use options for the area. In this regard, the Department will also coordinate with the Department of Commerce to provide data to the community/consortium relevant to this objective. There are no additional funds associated with this designation, and no special benefit or preference will be given to communities seeking this designation in receiving a grant under the Pilot Program. Rather, the Department will serve as a liaison between the community and other government agencies with respect to the community's development plans.

Communities that are interested in this designation should clearly indicate that interest in their applications separately from their grant proposals and should provide information in support of their selection for this designation. They should also clearly indicate this interest in the appropriate place in the Summary Information.

**Department Review and Grant Awards**

The Department will carefully review each proposal and the staff may contact applicants and discuss their proposals with them if clarifications or more information is needed. Communities may amend their proposals at any time prior to the Department's selection of grant recipients and we will consider those amendments to the extent the review process permits. It is our intent to make the grant awards as quickly as possible so that communities awarded grants can complete the grant agreement process and proceed to implement their plans.

Given our experience of last year, it is likely that we will receive more applications than we will be able to fund under the limitations of the Pilot Program. We, therefore, expect to have to make many very difficult decisions. With this in mind, in making our

[9] Each applicant is responsible for assuring that no part of its proposal would, if accepted, violate any of its AIP assurances.

[10] To the extent that applicants are interested in reviewing proposals that were submitted last year, those applications are publicly available in Docket OST–2002–11590 through the Department's docket management system at the following web address: *http://dms.dot.gov/.*

selections we will take into consideration the relative size of each applicant community; the geographic location of each applicant, including the community's proximity to larger centers of air service and low-fare service alternatives; the number of passengers expected to benefit from the proposed transportation initiative; the grant amount requested compared with total funds available for all communities; the proposed Federal grant amount compared with the local share offered; the uniqueness of applicants' claimed problem(s); the uniqueness of the applicant's proposed solution(s) to solving the problem(s); and the relative ability of the applicant to implement its proposed project and resolve or address the claimed problem(s). Finally, as stated above, we will consider whether the applicant community received a grant award under last year's appropriation.

An important overreaching objective of the Pilot Program is to find solutions to transportation problems of small communities that could serve as models for other small communities to improve their access to air service and to the Nation's air transportation system. To this end, we hope to approve, as we did last year, a variety of different and innovative proposals at many communities experiencing different types of transportation issues, challenges, and opportunities.

Given the highly competitive nature of the grant process, the Department does not intend to meet with grant applicants with respect to their grant proposals, a process that is sometimes used in other grant programs. The Department's selection of communities for grant awards will be based on the community's written submissions to the Department.

Communities awarded grants will be expected to execute a grant agreement with the Department *before* they begin to spend funds under the grant award. We also remind communities that the grant funds will be provided on a reimbursable basis only and only for expenses incurred and billed during the period that the grant agreement is in effect. Applicants therefore should not assume they have received a grant, nor obligate or spend local funds prior to receiving and fully executing a grant agreement under this program. Expenditures made prior to the execution of a grant agreement cannot and will not be reimbursed for any reason. We also remind communities that numerous assurances are required to be made and honored when Federal funds are awarded (such as, non-discrimination, etc.); acceptance of the responsibilities of these assurances is a requirement for receiving a grant under the Pilot Program.

This order is issued under authority delegated in 49 CFR 1.56a(f).

*Accordingly,*

1. Community proposals for funding under the Small Community Air Service Development Pilot Program should be submitted no later than June 30, 2003;[11] and

2. This order will be published in the **Federal Register** and also will be served on the Council of Mayors, the National League of Cities, the National Governors Association, the National Association of State Aviation Officials, the Association of County Executives, the American Association of Airport Executives (AAAE), and the Airports Council International-North America (ACI).

**Read C. Van de Water,**

*Assistant Secretary for Aviation and International Affairs.*

An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*

## Appendix A

**Sec. 203. Improved Air Carrier Service to Airports Not Receiving Sufficient Service**

(a) *In General*—Subchapter II of chapter 417 is amended by adding at the end the following:

Sec. 41743. Airports not receiving sufficient service

(a) *Small Community Air Service Development Pilot Program*—The Secretary of Transportation shall establish a pilot program that meets the requirements of this section for improving air carrier service to airports not receiving sufficient air carrier service.

(b) *Application Required*—In order to participate in the program established under subsection (a), a community or consortium of communities shall submit an application to the Secretary in such form, at such time, and containing such information as the Secretary may require, including—

(1) an assessment of the need of the community or consortium for access, or improved access, to the national air transportation system; and

(2) an analysis of the application of the criteria in subsection (c) to that community or consortium.

(c) *Criteria for Participation*—In selecting communities, or consortia of communities, for participation in the program established under subsection (a), the Secretary shall apply the following criteria:

(1) *Size*—For calendar year 1997, the airport serving the community or consortium was not larger than a small hub airport (as that term is defined in section 41731(a)(5)), and—

(A) had insufficient air carrier service; or

(B) had unreasonably high air fares.

(2) *Characteristics*—The airport presents characteristics, such as geographic diversity or unique circumstances, that will demonstrate the need for, and feasibility of, the program established under subsection (a).

(3) *State Limit*—No more than four communities or consortia of communities, or a combination thereof, may be located in the same State.

(4) *Overall Limit*—No more than 40 communities or consortia of communities, or a combination thereof, may be selected to participate in the program [in each year for which funds are appropriated for the program]. Note: Bracketed language was added by the Emergency Wartime Supplemental Appropriations Act, 2003, Pub. L. 108–11.

(5) *Priorities*—The Secretary shall give priority to communities or consortia of communities where—

(A) air fares are higher than the average air fares for all communities;

(B) the community or consortium will provide a portion of the cost of the activity to be assisted under the program from local sources other than airport revenues;

(C) the community or consortium has established, or will establish, a public-private partnership to facilitate air carrier service to the public; and

(D) the assistance will provide material benefits to a broad segment of the traveling public, including business, educational institutions, and other enterprises, whose access to the national air transportation system is limited.

(d) *Types of Assistance*—The Secretary may use amounts made available under this section—

(1) to provide assistance to an air carrier to subsidize service to and from an underserved airport for a period not to exceed 3 years;

(2) to provide assistance to an underserved airport to obtain service to and from the underserved airport; and

(3) to provide assistance to an underserved airport to implement such other measures as the Secretary, in consultation with such airport, considers appropriate to improve air service both in terms of the cost of such service to consumers and the availability of such service, including improving air service through marketing and promotion of air service and enhanced utilization of airport facilities.

(e) *Authority to Make Agreements*—

(1) *In General*—The Secretary may make agreements to provide assistance under this section.

(2) *Authorization of Appropriations*—There is authorized to be appropriated to the Secretary $20,000,000 for fiscal year 2001 and $27,500,000 for each of fiscal years 2002 and 2003 to carry out this section. Such sums shall remain available until expended.

(f) *Additional Action*—Under the pilot program established under subsection (a), the Secretary shall work with air carriers providing service to participating communities and major air carriers (as defined in section 41716(a)(2)) serving large

[11] Proposals must be postmarked no later than June 30. The original application should be submitted on 8.5″ x 11″ paper, in dark ink (not green) and without tabs to facilitate inclusion in the Department's docket management system. The remaining copies may be tabbed and include use of any color ink.

hub airports (as defined in section 41731(a)(3)) to facilitate joint-fare arrangements consistent with normal industry practice.

(g) *Designation of Responsible Official*—The Secretary shall designate an employee of the Department of Transportation—

(1) to function as a facilitator between small communities and air carriers;

(2) to carry out this section;

(3) to ensure that the Bureau of Transportation Statistics collects data on passenger information to assess the service needs of small communities;

(4) to work with and coordinate efforts with other Federal, State, and local agencies to increase the viability of service to small communities and the creation of aviation development zones; and

(5) to provide policy recommendations to the Secretary and Congress that will ensure that small communities have access to quality, affordable air transportation services.

(h) *Air Service Development Zone*—The Secretary shall designate an airport in the program as an Air Service Development Zone and work with the community or consortium on means to attract business to the area surrounding the airport, to develop land use options for the area, and provide data, working with the Department of Commerce and other agencies.

(b) *Conforming Amendment*—The analysis for subchapter II of chapter 417 is amended by adding at the end the following:

41743. Airports not receiving sufficient service.

## Appendix B

**Small Community Air Service Development Pilot Program**

*Summary Information*

All applicants must submit this information along with their proposal. Previous applicants may incorporate by reference all or any portion of their initial proposals in Docket OST–2002–11590, but must also submit this summary information to be considered for a grant award from the FY 2003 funding for the Pilot Program in this docket.

A. Applicant Information: (Check All That Apply)

☐ Consortium
☐ Community now receives EAS subsidy

*Point of Contact:*

Community Name _____
Address 1 _____
Address 2 _____
City, State Zipcode _____
Phone: _____
Fax: _____
Email: _____
County: _____
Point of Contact: _____

Community Name _____
Address 1 _____
Address 2 _____
City, State Zipcode _____
Phone: _____
Fax: _____
Email: _____
County: _____
Point of Contact: _____

**Designated Legal Sponsor: (Must be a Government Entity)**

*Point of Contact:*

Name _____
Title _____
Organization _____
Address 1 _____
Address 2 _____
City, State Zipcode _____
Phone: _____
Fax: _____
Email: _____

**Public/Private Partnerships: (List Organization Names)**

*Public*

1. _____
2. _____
3. _____
4. _____
5. _____

*Private*

1. _____
2. _____
3. _____
4. _____
5. _____

B. Project Information

Project Proposal: (Check All that Apply)

☐ Marketing
☐ Upgrade Aircraft
☐ New Route
☐ Personnel
☐ Increase Frequency Secure
☐ Low Fare Service
☐ Travel Bank, Transportation
☐ Service Restoration
☐ Surface
☐ Subsidy (specify)
☐ Regional Service
☐ Revenue Guarantee
☐ Launch New Carrier
☐ Start Up Cost Offset
☐ First Competitive Service
☐ Study
☐ Secure Additional Carrier
☐ Other

_____
_____
_____

Project Goal: Project Is Intended To Address Problems Involving (Check All That Apply)

☐ High Fares
☐ Insufficient Air Service
☐ Unique
☐ Airport Circumstance
☐ Access to National Transportation System Needed
☐ Other (specify) _____

Please provide a brief synopsis (in one paragraph) of the highlights of your proposal.

_____
_____

Project Cost:

Federal amount requested: _____
Total local financial contribution: _____
Airport funds: _____
Non-Airport funds: _____
State financial contribution: _____
Existing funds: _____
New funds: _____
In-kind contribution: (amount & description)
_____
Total cost of project: _____

C. Air Service Development Zone: (Check Box if Interested in Designation)

D. Airport Information: (Where Service Would be Provided)

Airport Name: _____
Airport City: _____
Airport State: _____
Airport Code: _____

Airport Classification: (as of June 2002, per FAA's Airport Handbook)

☐ Non Hub
☐ Small Hub
☐ Medium Hub
☐ Other

Existing Landing Aids:

☐ Full ILS
☐ Outer/Middle Marker Approach
☐ Published Instrument
☐ Localizer
☐ Other (specify) _____

Existing Service:

☐ Jet service
☐ Low Fare Service
☐ Turboprop

Air Carrier(s) Serving Airport:

Air Carriers

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

Current Flight Information: (Please Provide Attachment if You Need More Room)

Number of non-stop roundtrip flights per destination: _____

Number of one-stop, single-plane roundtrip flights per destination per week (identify services that are seasonal and dates of service): _____

Aircraft Type (include number of seats):

_____

Enplanements (Last Five Calendar Years to the Extent Applicable)

1998 _____

1999 _____

2000 _____

2001 _____

2002 _____

E. Airfares: (Provide Current Available Airfares for Top 3 O&D Markets—if Applicable)

O&D Market: _____

Airfare: _____

O&D Market: _____

Airfare: _____

O&D Market: _____

Airfare: _____

F. Proximity of Other Airports: (per June 2002 FAA Handbook)

What is your closest:

Non-hub (w/jet service) Name _____
Small Hub Name _____
Medium Hub Name _____
Large Hub Name _____
Low-fare service Name _____

[FR Doc. 03–11179 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Premium War Risk Insurance

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of extension of aviation insurance.

**SUMMARY:** This notice contains the text of a memo from the Secretary of Transportation to the President regarding the extension of the provision of aviation insurance coverage for U.S. flag commercial air carrier service in domestic and international operations.

**DATES:** Dates of extension from April 15, 2003 through June 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** Helen Kish, Program Analyst, APO–3, or Eric Nelson, Program Analyst, APO–3, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone (202) 267–9943 or (202) 267–3090. Or online at FAA Insurance Web site: *http://insurance.faa.gov.*

**SUPPLEMENTARY INFORMATION:** On April 8, 2003, the Secretary of Transportation authorized a 60-day extension of aviation insurance provided by the Federal Aviation Administration as follows:

Memorandum to the President

''Pursuant to the authority delegated to me in paragraph (3) of Presidential Determination No. 01–29 of September 23, 2001, and the direction of Section 1202 of the Homeland Security Act of 2002, I have extended that determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. Flag commercial air carrier service in domestic and international operations for an additional 60 days.

Pursuant to section 44306(b) of Chapter 443 of 49 U.S.C., Aviation Insurance, the period for provision of insurance shall be extended from April 15, 2003, through June 13, 2003.''

*/s/ Norman Y. Mineta*

*Affected Public:* Air carriers who currently have Premium War-Risk Insurance with the Federal Aviation Administration.

Issued in Washington, DC on April 25, 2003.

**Nan Shellabarger,**

*Deputy Director, Office of Aviation Policy and Plans.*

[FR Doc. 03–11234 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2003–23]**

### Petitions for Exemption; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before May 27, 2003.

**ADDRESSES:** Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14727–1 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wes Ryan (816–329–4127), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 30, 2003.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

### Petitions for Exemption

*Docket No.:* FAA–2003–14727–1.

*Petitioner:* Sino Swearingen Aircraft Corporation.

*Section of 14 CFR Affected:* 14 CFR part 23, § 23.181(b).

*Description of Relief Sought:* Sino Swearingen Aircraft Corporation seeks exemption from 14 CFR part 23, § 23.181(b) for the SJ30–2 Model aircraft. The purpose of this petition for exemption is to permit a change in the SJ30–2 ''Dutch Roll'' stability requirements defined by 14 CFR part 23, § 23.181(b) (airworthiness Standards for Normal, Utility, Acrobatic and Commuter Category Airplanes) to those defined by 14 CFR part 25, § 25.181(b) (Airworthiness Standards for Transport Category Airplanes), as amended by Amendment 25–75.

[FR Doc. 03–11229 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2003–24]**

### Petitions for Exemption; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**FOR FURTHER INFORMATION CONTACT:** Denise Emrick (202) 267–5174, Sandy Buchanan-Sumter (202) 267–7271, or Timothy R. Adams (202) 267–8033, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 30, 2003.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Dispositions of Petitions**

*Docket No.:* FAA–2003–14904.
*Petitioner:* Euroatlantic.
*Section of 14 CFR Affected:* 14 CFR 129.28.
*Description of Relief Sought/Disposition:* To permit Euroatlantic to operate one Lockheed L–1011 aircraft after April 9, 2003, without meeting the requirements of § 129.28(c) until September 2003. *Denial, 04/25/2003, Exemption No. 8032*

*Docket No.:* FAA–2002–8255.
*Petitioner:* Stallion 51 Corporation.
*Section of 14 CFR Affected:* 14 CFR 91.319(a)(1) and (2).
*Description of Relief Sought/Disposition:* To permit Stallion 51 to operate its Aero L–39C Albatros aircraft in flight training operations for hire. *Grant, 04/25/2003, Exemption No. 7538A*

*Docket No.:* FAA–2002–14119.
*Petitioner:* United States Marine Corps.
*Section of 14 CFR Affected:* 14 CFR 91.209(a)(1) and (2).
*Description of Relief Sought/Disposition:* To permit the United States Marine Corps to conduct helicopter night-vision device flight training operations without aircraft position lights. *Grant, 04/17/2003, Exemption No. 8028*

*Docket No.:* FAA–2001–8787.
*Petitioner:* Flight Alaska, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/Disposition:* To permit Flight Alaska to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 04/15/2003, Exemption No. 7505A*

*Docket No.:* FAA–2000–8157.
*Petitioner:* Petroleum Helicopters, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.152(a).
*Description of Relief Sought/Disposition:* To permit Petroleum Helicopters, Inc. to operate various helicopters under part 135 without an approved digital flight data recorder installed on each helicopter. *Grant, 04/17/2003, Exemption No. 6713G*

*Docket No.:* FAA–2001–9163.
*Petitioner:* Columbia Helicopters, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/Disposition:* To permit Columbia Helicopters, Inc. to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 04/15/2003, Exemption No. 6905B*

*Docket No.:* FAA–2001–8752.
*Petitioner:* American Trans Air.
*Section of 14 CFR Affected:* 14 CFR 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1), and appendix F
*Description of Relief Sought/Disposition:* To permit American Trans Air to combine recurrent flight and ground training and proficiency checks for American Trans Air flight crewmembers in a single annual training and proficiency evaluation program. *Grant, 4/15/2003, Exemption No. 6090D*

*Docket No.: FAA–2001–8937.*
*Petitioner:* Era Aviation, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.143 (c)(2).
*Description of Relief Sought/Disposition:* To permit Era Aviation, Inc. to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 4/15/2003, Exemption No. 5718E*

*Docket No.:* FAA–2001–8754.
*Petitioner:* Everts Air Fuel, Inc.
*Section of 14 CFR Affected:* 14 CFR 91.9(a).
*Description of Relief Sought/Disposition:* To permit Everts Air Fuel, Inc. to operate its McDonnell Douglas DC–6 aircraft at 5-percent-increased zero fuel weight and landing weight for all-cargo aircraft to provide supplies to people in isolated villages in Alaska. *Grant, 4/22/2003, Exemption No. 4296K*

*Docket No.:* FAA–2000–8186.
*Petitioner:* Sound Flight, Inc., dba Tronsdal Air.
*Section of 14 CFR Affected:* 14 CFR 135.203(a)(1).
*Description of Relief Sought/Disposition:* To permit Tronsdal Air to conduct operations under visual flight rules at an altitude below 500 feet, over water, outside controlled airspace. *Grant, 4/22/2003, Exemption No. 6428C*

*Docket No.:* FAA–2001–9494.
*Petitioner:* Cherry-Air, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/Disposition:* To permit Cherry-Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 4/22/2003, Exemption No. 7036B*

*Docket No.:* FAA–2001–10072.
*Petitioner:* Bay Air Charter, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.143(C)(2).
*Description of Relief Sought/Disposition:* To permit Bay Air Charter, Inc. to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 4/21/2003, Exemption No. 7592A*

[FR Doc. 03–11230 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 03–08–U–00–MKE To Use the Revenue From a Passenger Facility Charge (PFC) at General Mitchell International Airport, Milwaukee, WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at General Mitchell International

Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before June 6, 2003.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. C. Barry Bateman, Airport Director of the General Mitchell International Airport, Milwaukee, Wisconsin at the following address: 5300 S. Howell Avenue, Milwaukee, Wisconsin 53207–6189.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Milwaukee under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, (612) 713–4363. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at General Mitchell International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 9, 2003 the FAA determined that the application to use the revenue from a PFC submitted by the County of Milwaukee was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 10, 2003.

The following is a brief overview of the application.

*Level of the PFC:* $3.00

*Actual charge effective date:* May 1, 2004.

*Estimated charge expiration date:* December 1, 2011.

*Total approved PFC revenue:* $74,714,258.

*Brief description of proposed project:* Construct C concourse stem and 6 gate expansion.

*Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs:* Part 135 air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Milwaukee.

Issued in Des Plaines, Illinois on April 29, 2003.

**Barbara J. Jordan,**

*Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 03–11235 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 03–07–C–00–SAW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Sawyer International Airport, Marquette, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Sawyer International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before June 6, 2003.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. The application may be reviewed in person at this location.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harold R. Pawley, Airport Manager, Sawyer International Airport at the following address: Sawyer International Airport, 225 Airport Avenue, Gwinn, Michigan 49841.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Marquette under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Arlene B. Draper, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174 (734–229–2929). The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Sawyer International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 9, 2003 the FAA determined that the application to impose and use the revenue from a PFC submitted by County of Marquette was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, not later than July 29, 2003.

The following is a brief overview of the application.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* May 1, 2004.

*Proposed charge expiration date:* March 1, 2006.

*Total estimated PFC revenue:* $545,521.

*Brief description of proposed projects:* All Weather Observing System; Instrument Landing System; Airport Rotating Beacon; Runway End Identifier Lighting System and Precision Approach Path Indicator; Rehabilitate Taxiway Shoulders; Passenger Facility Charge Audit Fees; Snow Removal Equipment/Aircraft Rescue and Fire Fighting Equipment Building; Snow Removal Equipment.

Class or classes of air carriers, which the public agency has requested to be required to collect PFCs: The County of Marquette has not requested approval to exclude a class or classes of carriers from the PFC collection requirements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Marquette.

Issued in Des Plaines, Illinois on April 29, 2003.

**Barbara J. Jordan,**

*Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 03–11236 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2000–8560]**

### Icing Terminology

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Disposition of comments on proposed icing terminology.

**SUMMARY:** The FAA is publishing its final icing terminology and the disposition of the comments received regarding this icing terminology. These comments were solicited on December 22, 2000, when the FAA published its proposal for new and revised icing terms in the **Federal Register**.

**ADDRESSES:** The complete docket for the notice on intent may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Room 914–G, Docket No. FAA–2000-–8560, 800 Independence Ave., SW., Washington, DC 20591, weekdays (except Federal holidays) between 9 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Dan Meier, AFS–220 Air Transportation Division, Flight Standard Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3749.

**SUPPLEMENTARY INFORMATION:**

#### Background

Following the 1996 FAA international Conference on Aircraft In-flight Icing, the FAA developed and implemented the FAA In-flight Aircraft Icing Plan during 1997 for responding to the recommendations and concerns which arose from that conference. Task 1.B of the FAA In-flight Aircraft Icing Plan responded to recommendations and concerns expressed during the conference relative to consistent use of operational icing terminology in FAA regulations, guidance material, and manuals. Task 1.B addressed clarifying and redefining icing terminology applied to in-flight operations. In implementing Task 1.B, the FAA was to: First, ensure that this icing terminology (*e.g.,* known, forecast, observed, trace, light, moderate, severe, and ''appendix C'' icing) is used consistently and clearly by the Flight Standards Service, pilots, dispatchers, the National Weather Service (NWS), Aviation Weather Center, the Aircraft Certification Service, and Air Traffic; and second, to update guidance related to icing reporting and pilot, Air Traffic Control, and dispatcher actions.

To accomplish these objectives, the FAA established the Task 1B Working Group (WG), which comprised representatives from FAA, National Oceanic and Atmospheric Administration (NOAA), and the National Center for Atmospheric Research (NCAR). The goal of the WG was to review the definitions of all icing-related terms that appear in government aviation regulations, weather-related handbooks, aircraft flight manuals, etc. Based on its findings the WG was to make recommended changes to the definitions where they needed to be updated or improved. These recommendations would eliminate misunderstanding in their use among and between the previously mentioned sources.

This work was accomplished through a series of meetings by the WG, and the result was a set of proposed definitions for in-flight icing terminology. The WG did not consider or propose any changes to the aviation regulations or icing forecasting procedures, although it became clear to the WG that existing regulatory wording and existing policy within the U.S. National Weather Service (NWS) and the International Civil Aviation Organization (ICAO) limited the freedom of the WG to change the icing-related terms in use. A public meeting was held in July of 1999 to solicit comments and input from industry representatives and interested members of the public concerning the FAA's proposal to clarify or add selected icing terminology. The FAA also proposed to amend the pilot-reporting format for icing PIREPs and append a table of icing effects. The terminology definitions developed by the WG were published in the **Federal Register** on December 22, 2000 for public comment. The icing terminology definitions were appropriately revised during the disposition of the public comments.

#### Discussion

*Summary of Significant Changes to Icing Terminology*

The new terminology excludes trace ice, eliminates former ambiguities about the meaning of known or forecast ice, and defines several new terms.

The term ''trace ice'' has been deleted from the FAA in-flight icing terminology. The current definition of trace ice implied that it was not hazardous to flight, however, experience and research have shown that trace ice can be hazardous to some airplanes in certain conditions and that icing conditions can vary quickly and significantly in intensity. Also, National Transportation Safety Board (NTSB) Safety Recommendation A–98–88 recommended the following to the FAA: ''Amended the definition of trace ice contained in Federal Aviation Administration (FAA) Order 7110.10L, ''Flight Services'' (and in other FAA documents as applicable) so that it does not indicate that trace icing is not hazardous.'' Deletion of the term ''trace icing'' responds to the NTSB's Safety Recommendation A–98–88. However, the Task 1.B WG did acknowledge that deletion of the term ''trace icing'' may affect operation of airplanes without approved ice protection provisions in the heretofore defined ''trace icing'' conditions. ''Trace icing,'' previously defined as an icing intensity less severe than ''light'' or ''moderate'' icing, is not addressed by the FAA operating rules (14 CFR 91.527(b), 121.341(c), 125.221(c), and 135.227(c)). Therefore, the operation of some airplanes in ''trace icing'' without ice protection provisions may be inferred as acceptable since the term ''trace icing'' is not addressed by the rules. Definitions of the icing intensity terms are not included in the regulations definitions provided by 14 CFR part 1. The WG concluded that the term ''trace icing'' should be deleted since: (1) The airworthiness of airplanes without ice protection provisions in any icing conditions was not addressed during type certification of such airplanes; (2) the operating rules fail to define light and moderate icing and fails to address ''trace icing;'' (3) the earlier discussion indicates that ''trace icing'' can be hazardous, especially without ice protection provisions; and (4) the NTSB Safety Recommendation A–98–88 states that FAA documents should not indicate that ''trace icing'' is not hazardous. Deletion of ''trace icing'' and re-definition of ''light icing'' will clarify and provide a means for showing compliance with the intent of the previously mentioned FAA operating rules.

Airplanes having certification with ice protection provisions are approved for flight in icing conditions but do not have the capability of unlimited operation in all icing conditions. Currently, airplanes having certification with ice protection provisions, in compliance with 14 CFR 23.1419 and CFR 25.1419, must be able to operate safely in the icing conditions defined in appendix C of 14 CFR part 25. Icing conditions in clouds, defined in appendix C of 14 CFR part 25, were established as being satisfactory standards for the design and certification of airplane ice protection

provisions, however atmospheric icing conditions are highly variable and can exceed these standards. Freezing precipitation (freezing rain and freezing drizzle), within and below clouds are examples of conditions that are not address by and exceed Appendix C. When encountering icing conditions that exceed appendix C of 14 CFR part 25, ice protection provisions may no longer be effective to provide safe operations and flight crew action may be required to promptly and safely exit those atmospheric environments, as required by 14 CFR 91.13.

The following is the list of terms recommended by the Task 1B WG as an updated replacement for current terminology used in reference to in-flight icing of aircraft. The FAA intends to update the current terminology with the following terms.

**Icing Terminology and Definitions**

*Icing Intensities*

Light

The rate of ice accumulation requires occasional cycling of manual deicing systems** to minimize ice accretions on the airframe. A representative accretion rate for reference purposes is ¼ inch to one inch (0.6 to 2.5 cm) per hour * on the outer wing. The pilot should consider exiting the condition.***

Moderate

The rate of ice accumulation requires frequent cycling of manual deicing systems ** to minimize ice accretions on the airframe. A representative accretion rate for reference purposes is 1 to 3 inches (2.5 to 7.5 cm) per hour * on the outer wing. The pilot should consider exiting the condition as soon as possible.***

Heavy

The rate of ice accumulation requires maximum use of the ice protection systems to minimize ice accretions on the airframe. A representative accretion rate for reference purposes is more than 3 inches (7.5 cm) per hour * on the outer wing. Immediate exit from the conditions should be considered.***

Severe

The rate of ice accumulation is such that ice protection systems fail to remove the accumulation of ice and ice accumulates in locations not normally prone to icing, such as areas aft of protected surfaces and any other areas identified by the manufacturer. Immediate exit from the condition is necessary.****

* These rates can be measured by a suitable icing rate meter.

** It is expected that deicing or anti-icing systems will be activated and operated continuously in the automatic mode, if available, at the first sign of ice accumulation, or as directed in the Airplane Flight Manual. *Occasional and frequent* cycling refers to manually activated systems.

*** It is assumed that the aircraft is approved to fly in the cited icing conditions. Otherwise, immediate exit from any of these intensity categories is required by regulations (14 CFR 91.13(a), 91.527, 121.341, 125.221, and 135.227).

**** *Severe* icing is aircraft dependent, as are the other categories of icing intensity. Severe icing may occur at *any* ice accumulation rate when the icing rate or ice accumulations exceed the tolerance of the aircraft. Icing certification implies an increased tolerance to icing intensities up through heavy.

*Icing Types*

**Note:** Ice types are difficult for the pilot to discern and have uncertain effects on an airplane in flight. Ice type definitions will be included in the AIM for use in the ''Remarks'' section of the pirep and for use in forecasting.

Rime Ice

A rough, milky, opaque ice formed by the rapid freezing of supercooled drops/droplets after they strike the aircraft. The rapid freezing results in air being trapped, giving the ice its opaque appearance and making it porous and brittle. Rime ice typically accretes along the stagnation line of an airfoil and is more regular in shape and conformal to the airfoil than glaze ice. It is the ice shape, rather than the clarity or color of the ice, which is most likely to be accurately assessed from the cockpit.

Glaze Ice

Ice, sometimes clear and smooth, but usually containing some air pockets, which results in a lumpy translucent appearance. Glaze ice results from supercooled drops/droplets striking a surface but not freezing rapidly on contact. Glaze ice is denser, harder, and sometimes more transparent than rime ice. Factors, which favor glaze formation, are those that favor slow dissipation of the heat of fusion (i.e., slight supercooling and rapid accretion). With larger accretions, the ice shape typically includes ''horns'' protruding from unprotected leading edge surfaces. It is the ice shape, rather than the clarity or color of the ice, which is most likely to be accurately assessed from the cockpit. The terms ''clear'' and ''glaze'' have been used for essentially the same type of ice accretion, although some reserve ''clear'' for thinner accretions which lack horns and conform to the airfoil.

Clear Ice

*See* Glaze Ice.

Mixed Ice

Simultaneous appearance or a combination of rime and glaze ice characteristics. Since the clarity, color, and shape of the ice will be a mixture of rime and glaze characteristics, accurate identification of mixed ice from the cockpit may be difficult.

Known or Observed or Detected Ice Accretion

Actual ice observed visually to be on the aircraft by the flight crew or identified by onboard sensors.

Runback Ice

Ice which forms from the freezing or refreezing of water leaving protected surfaces and running back to unprotected surfaces.

Residual Ice

Ice which remains on a protected surface immediately after the actuation of a deicing system.

Intercycle Ice

Ice which accumulates on a protected surface between actuation cycles of a deicing system.

*Icing Conditions*

Forecast Icing Conditions

Environmental conditions expected by a National Weather Service or an FAA-approved weather provider to be conducive to the formation of in-flight icing on aircraft.

Potential Icing Conditions

Atmospheric icing conditions that are typically defined by airframe manufacturers relative to temperature and visible moisture that may result in aircraft ice accretion on the ground or in flight. The potential icing conditions are typically defined in the airplane flight manual or in the airplane operation manual.

Known Icing Conditions

Atmospheric conditions in which the formation of ice is observed or detected in flight.

**Note:** Because of the variability in space and time of atmospheric conditions, the existence of a report of observed icing does not assure the presence or intensity of icing conditions at a later time, nor can a report of no icing assure the absence of icing conditions at a later time.

Freezing Rain (FZRA)

Rain is precipitation at ground level or aloft in the form of liquid water drops which have diameters greater than 0.5

mm. Freezing rain is rain that exists at air temperatures less than 0 °C (supercooled), remains in liquid form, and freezes upon contact with objects on the ground or in the air.

Freezing Precipitation

Freezing precipitation is freezing rain or freezing drizzle falling through or outside of visible cloud.

Freezing Drizzle (FZDZ)

Drizzle is precipitation at ground level or aloft in the form of liquid water drops which have diameters less than 0.5 mm and greater than 0.05 mm. Freezing drizzle is drizzle that exists at air temperatures less than 0 °C (supercooled), remains in liquid form, and freezes upon contact with objects on the surface or airborne.

Icing in Precipitation

Icing occurring from an encounter with freezing precipitation, that is, supercooled drops with diameters exceeding 0.05 mm, within or outside of visible cloud.

Icing in Cloud

Icing occurring within visible cloud. Cloud droplets (diameter < 0.05 mm) will be present; freezing drizzle and/or freezing rain may or may not be present.

Supercooled Large Drops (SLD)

Liquid droplets with diameters greater than 0.05 mm at temperatures less than 0 °C, i.e., freezing rain or freezing drizzle.

Supercooled Drizzle Drops (SCDD)

Synonymous with freezing drizzle aloft.

Supercooled Drops or /Droplets

Water drops/droplets which remain unfrozen at temperatures below 0 °C. Supercooled drops are found in clouds, freezing drizzle, and freezing rain in the atmosphere. These drops may impinge and freeze after contact on aircraft surfaces.

Appendix C Icing Conditions

Appendix C (14 CFR, part 25 and 29) is the certification icing condition standard for approving ice protection provisions on aircraft. The conditions are specified in terms of altitude, temperature, liquid water content (LWC), representative droplet size (mean effective drop diameter [MED]), and cloud horizontal extent.

**Disposition of Comments**

*1. Request for Statement That Icing Certification Does Not Imply Unlimited Safe Flight in All Icing Conditions*

One commenter requested that the FAA include in the final notice emphasis that certification for flight in icing conditions does not imply that an aircraft has the capability for unlimited safe flight in all icing conditions.

The FAA concurs. The discussion section of the notice has been revised accordingly.

*2. Drop Proposed New Icing Intensity Definitions*

The arguments in favor of dropping the icing intensity definition are as follows:

(a) Any changes in the definitions would be too confusing (to pilots).

The FAA does not concur. The FAA 1996 international icing conference concluded that the existing icing terminology is confusing. Reasons for this conclusion include:

- The present definition of severe is contradictory to 14 CFR 91.209(c) and 135.227(c) which allow icing-certificated airplanes to fly into severe (uncontrollable, by definition) icing conditions.
- The definitions give no objective standard or rules for pilots to decide which icing intensity the aircraft is experiencing at the moment, or for distinguishing one intensity level from the next.
- With the present definitions, icing intensities are neither measurable nor forecastable, because the definitions contain no quantitative relationship to anything that is calculable or observable, nor any connection at all to the icing atmosphere.
- There is presently no way to relate the icing intensity reported by one aircraft make and model to another.

The proposed terminology responds to the conclusions reached by the 1996 conference.

Icing intensities are of interest to pilots and forecasters, of course, but also to icing engineers, each group having its own experiences, needs, and perspectives. But the present icing definitions are useless to forecasters and engineers because the definitions contain nothing that can be measured or calculated, and they are of questionable value to pilots for the reasons bulleted above. During development of the proposed definitions, it became clear that the three groups often have difficulty comprehending the viewpoints of the others, and this contributes to the confusion. The public comments on the proposals were almost exclusively from the viewpoint of pilots, and the comments reflect their perspective. The proposed changes were intended to accommodate all three groups and to help overcome at least some of these problems.

To minimize confusion on the part of the pilots, it was decided to keep some of the familiar wording while adding a quantifiable aspect to make the definitions more useful for engineering and forecasting purposes.

(b) The definitions are intended to be reporting definitions and nothing else.

The FAA does not concur. The original intent of the definitions was that they be used by pilots and flight crews to report encountered icing conditions. However, the pilot reports are now being used also by meteorologists to diagnose and forecast icing conditions. If a quantitative relationship between the intensity levels and something measurable and calculable is established, the definitions can be used for reporting, forecasting, and engineering purposes, and their utility can therefore be markedly improved.

(c) The proposal to relate icing intensities to both the wing and tailplane, each with their own icing rates, will give rise to two icing intensities for the airplane instead of just one.

The FAA concurs. The most icing-critical components of the aircraft are, of course, the ones to be concerned about. In the absence of any more critical components, the outer wing is now suggested in the interest of establishing a meaningful and uniform reference location for ice accretions on all airplanes. Typically, the outer wingspan, being the thinnest part of the wing, has the greatest droplet collection efficiency for the wing.

(d) Large airplanes will report lesser icing intensities than small airplanes in the same icing conditions.

The FAA concurs. This is already true with the existing definitions, and will remain true no matter what the definitions may be. However, because of this issue, the proposed definitions identify the leading edge as the reference surface and the PIREP format for icing is being revised to ensure reporting of the airplane type. This information can be interpreted by other pilots relative to anticipated ice accretion and flying quality effects for their aircraft and can meteorologically define the encountered icing environment. The new, quantified definitions are designed to take advantage of the difference in response between large and small airplanes and enable icing intensities to actually be

computed (using modern software) for a given icing condition. This new feature is a major improvement because it will allow icing forecasts to be tailored to individual airplane makes and models, to the degree that the relevant variables are known. AIAA–98–0094 contains information on how the new definitions will permit this to be achieved.

(e) The only way for accretion-based intensities to be useful for forecasting is to have every airplane carry a small ice accretion probe and base icing (PIREP) reports on that.

The FAA partially concurs. Having a common ice accretion probe on all aircraft for reporting icing conditions would be advantageous, however, the FAA does not currently plan to mandate such a probe. The choice of the reference surface coupled with the aircraft model and estimated accretion rate provides useful information for forecasting.

There are two ways to categorize icing conditions—describe the atmospheric conditions themselves, or describe their effects on the aircraft. The former would include liquid water concentration, static air temperature, and perhaps a representative droplet size in the clouds. But these are meaningless to pilots unless they are translated into effects on the aircraft. The effects may be qualitative or quantitative.

Qualitative definitions focus on perceivable effects on the aircraft and are not quantifiable. The present icing intensity definitions are ultra-qualitative, using terms like occasional or frequent need to deice, and vague warnings that the icing may create a problem or is potentially hazardous, for example. (In comparison, see the AIM for definitions of turbulence intensities which, although qualitative, are much easier to characterize and distinguish).

Quantitative definitions would specify ice accretion rates on components of concern or would list graduated intervals of speed loss, compensatory power increase, or other measurable effects of ice accretion. (A graduated table of operational effects was developed and will be submitted as a recommended change to the PIREP format.)

The situation is complicated by the presence of functioning ice protection equipment. When the equipment is operating, it may be difficult or impossible to observe, estimate, or measure any ice accretion on the protected surfaces. For heated wings there should be no ice accretion to report anyway. For booted wings operated on automatic cycle intervals, the crew would have to estimate the rate of buildup between cycles. Newer boot models with embedded icing rate sensors may be useful here.

Otherwise, an icing rate meter (not located on a critical surface) is a useful surrogate for quantitative measurements of both the icing atmospheric variables and the ice accretion on the aircraft components of concern. To a certain extent, it can be related quantitatively to both. By taking into account the differences in the droplet collection efficiency of the probe compared to the aircraft component, rates measured by the probe can be converted to proportional rates on the component.

In a similar way and to a certain extent, icing rates measured by a probe on one airplane can be converted to expected accretion rates on components of other airplanes too, as long as the airspeeds are known. The new, quantitative definitions also take advantage of this fact and allow these measured icing rates to be converted to equivalent icing rates on the wings or tailplane of the reporting airplane and on any other make and model that may fly through the same icing conditions. (For a good explanation, see the technical paper ''A Workable, Aircraft-Specific Icing Severity Scheme'', AIAA–98–0094 (Jan. 1998) by R. Jeck.)

It must be understood that the indicated icing rates are those to be expected on an unheated component.

Gradually more and more airplanes may install icing rates probes that are already commercially available. Through icing PIREPS, this would greatly help the icing forecasters and, by means of conversion tables, could help even those airplanes without the probes.

(f) There is no need to re-define something that well-trained pilots have known about for 30 years or more.

The FAA does not concur. Concerns have been expressed about the ambiguities of the existing definitions. The existing definitions are outmoded in view of technological advances. The existing definition were formulated at a time when no suitable icing rate meters were available, and when computing icing rates on an airfoil was prohibitively difficult due to lack of computing power and to lack of the necessary experimental data on most airfoils. The FAA wishes to modernize the definitions consistent with current and anticipated technology.

(g) Except for severe icing conditions, airplanes certificated for flight in icing conditions are supposed to be protected enough to allow safe transition out of icing, or to lesser icing intensities. Therefore, the changes in definitions are neither helpful nor necessary nor increase safety.

The FAA does not concur. Even for icing-certificated airplanes, reported icing intensities are helpful for planning, forecasting of icing conditions, situational awareness, and compliance with operating rules and associated limitations (14 CFR parts 91.527, 121.341, 125.221, and 135.227). The definition of severe icing conditions is being changed to be airplane-specific. Thus, reported less-than-severe icing conditions for one aircraft may indicate severe icing for other types of aircraft.

(h) The new definitions endanger safety and introduce new ambiguities.

The FAA does not concur. In light of the explanations given above, current ambiguities will be reduced for all users because of better, more versatile definitions of the icing intensities.

*3. Revise Definitions of Light and Moderate Icing To Make Them Consistent With the ADs on the Operation of Pneumatic Boots*

One commenter requested that the FAA revise definitions of light and moderate icing to make them consistent with the ADs issued by the FAA in December 1999 on the operation of pneumatic boots.

The FAA concurs. Therefore, the word ''use'' has been replaced by ''cycling'' so as not to imply delayed activation of ice protection systems.

*4. Include Characterization of Hazard to Aircraft in Icing Intensity Definitions*

Include characterization of hazard to aircraft in icing intensity definitions. (One commenter suggests that these be related to loss in indicated airspeed of percentage increase in power.)

The FAA partially concurs. The definitions were modified to include characterization of the hazard, however, the aerodynamic effects of icing are aircraft-specific. Therefore, the PIREP icing report format currently contained in the AIM in being revised to include the characterization of the hazard being experienced by the reporting pilot.

*5. Remove Footnotes*

The FAA does not concur. Although the footnotes have been removed, the information contained in them has been corrected and retained within the definitions themselves.

*6. Correct Errors in Footnotes*

Several commenters noted that there were typographical errors in the footnotes.

The FAA concurs. Typographical errors in the footnotes have been corrected and the information has been inserted in the definitions.

*7. Revise Icing Rates in Footnotes, as They Are Not Realistic or Not Consistent With Certification Standards*

(a) An icing rate of ¼-inch in five minutes, which would be severe based on these definitions, would not be considered hazardous with regard to the effect on aircraft flight characteristics on certain types of regional aircraft.

The FAA concurs. The FAA now agrees that it is incorrect to assign an icing rate to severe. The FAA proposes to re-instate the term heavy for the greatest icing rate category. The FAA recommends that the term severe (without any icing rate attached) be retained to cover the situation where the ice protection system is inadequate, no matter what the icing rate.

(b) What is the basis for the numerical icing rates assigned to the different intensities?

The icing rates that were given in the footnotes were taken from the technical paper. ''A Workable, Aircraft-Specific Icing Severity Scheme,'' AIAA–98–0094 (Jan. 1998) by R. Jeck. While the reference rates are admittedly arbitrary, and are primarily based on the traditional operation of the pneumatic deicing boots, the AIAA paper clearly explains the rationale behind these rates and gives several application examples. Interested readers are referred to this paper.

In AIAA–98–0094, occasional is interested as once every 15 minutes to an hour. Similarly, for moderate icing, which the present definitions associate with (frequent) use of deicers, the word frequent is interpreted as once every 5 to 15 minutes. Severe (or preferably heavy) icing rates must require even more usage, which would have to be more often than once every 5 minutes. In tabular form, the proposed rates have the following relationships:

*Light:* ¼-inch accumulation in 15–60 minutes, which is equivalent to
0.1–0.4 mm./min, or
¼ to 1 inch per hour.

*Moderate:* ¼-inch accumulation in 5–15 minutes, which is equivalent to
0.4–1.3 mm/min, or
1 to 3 inches to hour.

*Heavy:* ¼-inch accumulation in less than 5 minutes, which is equivalent to
more than 1.3 mm/min, or
more than 3 inches per hour.

This scheme preserves the ''1-hour'' separation between light and moderate intensities, as mentioned in the present definitions. It also relates the onset of heavy icing conditions with a rate that would, if continued, produce a 3-inch accumulation in an hour.

Three inches of ice on unprotected surfaces is considered to be a critical accumulation for design, test, and certification purposes.

(c) Commenters suggests changing the footnotes to read 30–60 minutes for light, 15–30 minutes for moderate, and 5–15 minutes for heavy.

The FAA does not occur. The commenter may be uncomfortable with the proposed 45 minutes spread in time allowed for light icing intensities, and prefer a 30 minute spread instead. But the commenter has not provided any justification for his preference.

(d) Severe icing is (presumably) a condition outside of the Continuous Maximum envelope because, by rule, the (icing-certificated) aircraft must have protection throughout this envelope. But ''severe icing'' can be found on the Continuous Maximum icing chart in 14 CFR part 25, Appendix C. This is inconsistent.

The FAA concurs that inconsistency could arise with the previous definition of severe for some conditions within the continuous maximum icing envelope. However, the FAA now agrees that it is incorrect to assign an icing rate to severe, so any inconsistency has been eliminated. The rate previously assigned to ''severe icing'' is not assigned to ''heavy icing.'' Depending on the airspeed of the aircraft and the collection efficiency of the monitored surface, the heavy icing rate can occur for some points within the continuous maximum icing envelope, particularly for shorter encounters. For encounters exceeding about 20 minutes, a heavy icing rate would ordinarily not be experienced in continuous maximum conditions by most aircraft because of the envelope correction reducing liquid water content for sustained encounters.

*8. Base Icing Rates in Footnotes in Unprotected Surfaces to Preferably on a Representative Ice Detector Surface or Probe*

Base icing rates in footnotes on unprotected surfaces or preferably on a representative ice detector surface or probe. (That is, if the wing and tailplane are ice protected, then the pilot cannot observe or judge icing rates there while the protection systems are preventing or removing the ice. Therefore, only a separate probe or an unprotected part of the wing will be useful or observing ice accretion rates.)

The FAA concurs. The outer wing may be used unless otherwise specified. The outer wing and tailplane were suggested as standard reference locations so that everyone involved (pilots, forecasters) would all be focused on the same spot on the airplane. Naturally, these locations may not even be observable due to darkness or line-of-sight obstruction, for example. Heated wings would not be expected to accumulated any ice anyway. In that case, the pilot would not report any icing intensity. Icing conditions may exist, but for adequately heated wings there should be no accretion and therefore no intensity! If the protected parts of the aircraft do collect ice, then it would be reported as severe if the equipment is unable to control it. This would apply to the windshield too, if it iced over uncontrollably.

In any case, there is no substitute for a good measurement, and the proposed definitions anticipate the eventual use of icing rate meters for obtaining the measurements. Icing rate measurements on a probe can be converted to corresponding rates on the wing or tail. In the absence of an icing rate meter, the pilot is encouraged to estimate an accretion rate with the outer wing or tailplane in mind. This is no different from the present situation where pilots are instructed in the AFM to estimate when ¼-inch of ice has accreted as a signal for inflating the boots. Admittedly, without an icing rate meter there is no easy way to estimate ice accretion rates or amounts. This is a problem even with the current definitions. But by focusing on the same ice-critical components of the airplane, there can be uniformity in reporting and eventually in forecasting.

*9. Retain the Term Trace Icing*

(a) The NTSB (A–98–88) did not recommend eliminating trace icing, but only to eliminate the ''not hazardous'' wording.

The FAA does not concur and has decided to delete the term Trace ice for the following reasons:

- Trace icing is not forecast.
- Trace icing is not governed by the regulations.
- Identification of trace icing is dependent on the capability of the pilot to judge. The FAA considers that estimating an ice accretion of a quarter of an inch or less per hour is outside the judgment of a pilot and questions how the instrumentation would handle it.
- The definition of trace icing implies continued flight in icing by unprotected aircraft is acceptable.
- An interpretation of 135.227 suggests that the proposed change may negate the current practice of flight in IFR icing conditions by unprotected aircraft and aircraft certified for icing under older rules (CAR–3, prior to amendment 23–14).

• Removal of the term trace icing is consistent with the FAA position that all icing is hazardous.

(b) Commenter recommends defining trace icing as: ''Icing becomes perceptible and the rate of accumulation is slightly greater than the rate of sublimation. Icing resulting from flight in a supercooled cloud with liquid water content less than 0.1 grams per cubic meter. A representative accretion rate for forecasting or reference purposes is ¼-inch or less in an hour or more on an outer wing or tailplane, prior to activation of any ice protection equipment.''

The commenter is from the helicopter community where icing severity based on a LWC scale has been in use out of necessity. This is because, in hover, there is no forward flight and an artificially aspirated icing sensor must be used in order to assess the icing environment. In that case, the icing rate indicated by the sensor has no relation to what may be happening on the airframe. Rather, the icing rate, under the known aspirated air velocity, can be converted to LWC to gauge the icing propensity of the cloud or fog in which the helicopter may be embedded at the moment. In this case, the helicopter manufacturer may have to supply some relationship between LWC amounts and the expected effects on the helicopter.

In any case, the FAA has no recommendations for an icing intensity scale for helicopters. The FAA proposals were intended for fixed wing airplanes. * * *

*10. Retain Trace Icing If Its Elimination Will Result in Greater Aerial Coverage of Forecast Icing*

Another commenter requested that the term ''trace icing'' be retained if its elimination would result in greater aerial coverage of forecast icing.

The FAA does not believe that the aerial coverage of forecast icing will be affected by the elimination of the term ''trace icing,'' since trace icing is not forecast by the NWS. Light icing is forecast by the NWS, and it will continue to be forecast under the same conditions whether or not trace icing is eliminated.

*11. Change the Definition of ''Light Icing'' to ''The Rate of Ice Accumulation May Require Occasional Use of Ice Protection Systems To Remove or Prevent Accumulation''*

The FAA partially concurs. The recommended wording is reflected in the new wording proposed by the FAA.

*12. Change the Definition of ''Light Icing'' So That It Is Icing ''Represented by the Capability of the Aircraft To Safely Fly and Land Without the Ice Protection Turned On''*

The FAA does not concur. Light ice can accrete to the point where ice protection may be required. The pilot may not be able to judge ice accretion that results in reduced safety margins.

*13. Change the Definition of ''Moderate Icing'' to ''The Rate of Ice Accumulation May Require Occasional to Frequent Use of Ice Protection Systems To Remove or Prevent Accumulation''*

The FAA partially concurs. The commenter retains the conditional ''may'' from the definition of light icing in the original notice. The FAA now believes that both light and moderate icing connotes a definite need to activate ice protection equipment.

The commenter also suggests retaining the word ''occasional'' in the description of moderate icing. According to the proposed revised definitions, moderate icing corresponds to ¼-inch of ice accumulation every 5 to 15 minutes. This has been interpreted (in AIAA–98–0094) as frequent usage if the deicing system is activated at least each time ¼-inch accumulates.

*14. Change the Definition of ''Moderate Icing'' to Anything Between Light and Severe*

The FAA does not concur. For clarity, the FAA prefers to provide an independent definition of moderate icing.

*15. The Term ''Severe Icing'' Should Be Reserved for Ice Protection System Failure-To-Remove-Ice, and the Term ''Heavy Icing'' Used To Describe Ice Accretion Rates*

The FAA concurs. Although the term heavy has long been used by pilots to describe ice accretions greater than moderate, it has not been used for official forecasts or reporting. The FAA will propose that the National Weather Service cease forecasting severe icing and instead forecast heavy icing. Heavy icing should be based on reasonable scientific principles. The FAA agrees that severe icing is aircraft-specific while heaving icing need not be and that severe icing should be limited to a failure-to-remove-ice condition until meteorological technology makes it possible to forecast severe ice conditions with reasonable accuracy which can be applied to specific aircraft.

*16. Define ''Severe Icing'' To Be Anything Beyond What the Aircraft Has Demonstrated in Certification*

The FAA does not concur. Some airplane designs may be able to operate safely in icing conditions exceeding the certification standards, depending on airplane size and ice protection system capability.

*17. New Definition of Severe Icing Conditions Is Not Consistent With Definitions in FAA Advisory Material*

The FAA concurs. When the new definition of severe icing, as well as the other proposed definitions, are approved, the FAA will revise all advisory material to include the new terminology.

*18. The Term ''Heavy'' Should Be Included in the List of Definitions To Characterize an Accretion Rate Previously Associated With ''Severe Icing''*

The FAA concurs. The FAA will propose that the term ''heavy'' be included in the list of new definitions as the ice accretion rate associated with the current definition of severe.

*19. The Term ''Heavy'' Should Be Used To Provide Another Icing Level Between Moderate and Severe*

The FAA concurs. The term ''severe icing'' will be reserved to refer to that condition where the pilot determines that his/her aircraft cannot safely continue flight. Revise note for accuracy or delete note.

The FAA concurs that as written the note was unclear, and it has been revised.

*20. Request To Use Shape as the Primary Descriptor, and Clarity and Color (if at all) as Secondary Descriptors in the Definitions of Ice Types*

Several commenters requested that shape be included as a descriptor in the ice type definitions. It was further requested that shape be identified as the primary descriptor, and clarity and color as secondary descriptors, on the grounds that shape is more likely to be accurately identified from the cockpit than clarity or color.

The FAA partially concurs and has added shape to the definitions of rime and glaze ice. Furthermore, the definitions now include acknowledgment that shape, rather than clarity or color, is more likely to be accurately assessed from the cockpit.

*21. Request To Relate Aerodynamic Effects to Ice Type in Definitions*

One commenter requested that statements relating ice type to

aerodynamic effects be included in the ice type definitions.

The FAA does not concur. The FAA acknowledges that glaze ice, particularly if horns are present or if the ice is relatively rough, is likely to be more detrimental to flying qualities than rime ice, particularly if the rime is conformal to the airfoil and relatively smooth. However, determination of ice type from the cockpit is challenging and may be extremely difficult. Thus, misidentification of ice type by pilots, particularly when visibility is limited by night or other circumstances, may be a common event. If such misidentification is associated with erroneous expectations as to the aerodynamic effect of the ice, potential hazards to the safety of flight may be increased.

*22. Request To Reword Definition of ''Rime Ice''*

One commenter noted inconsistencies in the wording of the definitions of rime and glaze ice, and requested that these inconsistencies be corrected.

The FAA concurs and the wording has been clarified.

*23. Request To Not Include Clear Ice as a Separate Term in List of Definitions*

One commender requested that clear ice be referenced in the definition of glaze ice, and that it be deleted as separate entry in the list of definitions. The commenter noted that the proposed definitions indicate identical formation mechanisms for glaze ice and clear ice, and provided no reason to differentiate between the two.

The FAA partially concurs. Clear ice is a commonly used term within the aviation community. It is retained, therefore, as a separate entry in the list but the reader is referred to the definition of glaze ice which has the same formation mechanism.

*24. Request To Reword Definition of Mixed Ice*

One commenter requested that the word ''characteristics'' be added at the end of the first sentence in the definition of mixed ice.

The FAA concurs. Accordingly, the word ''characteristics'' has been added at the end of the first sentence in the definition of mixed ice.

*25. Request To Either Delete the Term ''Known or Observed/Detected Icing'' From the List of Definitions or To Combine It With the Term ''Known Icing Conditions''*

One commenter requested that the FAA delete the term ''Known or Observed/Detected Icing'' or else combine it with the term ''Known Icing.'' The commenter believed that there was not a sufficiently clear distinction between the two terms and that retention of both would cause confusion.

The FAA does not concur, but agrees that there is a possibility of confusion. Therefore, it has replaced the term ''Known or Observed/Detected Icing'' with ''Known or Observed/Detected Ice Accretion'' in order to avoid such confusion. The FAA believes that there is a clear distinction between Known Icing Conditions and Known or Observed/Detected Ice Accretion.

*26. Request To Clarify the Meaning of ''Approved'' in Definition of ''Forecast Icing Conditions''*

The FAA concurs that clarification is needed and has revised the definition to state that the weather provider must be FAA-approved.

*27. Request To Revise Definition of ''Potential Icing Conditions''*

Two commenters request that the definition of ''potential icing conditions'' be revised for improved clarity and accuracy and so that it will not be confused with ''forecast icing conditions.''

The FAA concurs. Potential icing conditions are typically defined by airframe manufacturers relative to temperature and visible moisture that may result in aircraft ice accretion on the ground or in flight. Because the airframe manufacturers are aware of areas on the aircraft, such as the engine induction system, that may accrete ice under certain atmospheric conditions, aircraft manufacturers are considered to be the best source for this information. The potential icing conditions are typically defined in the airplane flight manual or in the airplane operation manual. Forecast icing conditions are predicted by weather providers.

*28. Either Delete the Definition of ''Known Icing Conditions'' in the List, or Else Align the Definition With That Used in the Relevant NTSB Cases*

The FAA does not concur with this request because it believes that there is no conflict between the revised definition and the NTSB cases. Essentially the proposed definitions of ''Known Icing Conditions,'' ''Known Ice,'' and ''Forecast Icing'' are in agreement with the recent court cases. In the case of Irmisch v. McLucas Civil No. 76–4273 (CA 2, filed May 2, 1977) the court understood Known Icing to mean icing that is known to the pilot. The FAA is not in conflict with the NTSB in its interpretation of forecast icing since forecasted icing conditions existed at the time of the aircraft icing events in the three cases cited by the commenter.

Forecast icing conditions represent the best estimate by the National Weather Service that icing conditions will be present at a certain time over a certain geographic area. A forecast of icing conditions does not mean that there is an absolute certainty that icing will occur. It does mean, however, that a pilot must take into account forecasted icing conditions during flight planning so that the pilot, whose aircraft may not meet the requirements of the regulations, avoids actual icing. The FAA sees no conflict between the proposed definitions and what is required by the regulations.

*29. Reword Definition of ''Freezing Rain (FZRA)'' for Improved Clarity, Etc.*

Several commenters requested that the FAA reword the definition of ''freezing rain (FZRA)'' for improved clarity, accuracy, utility, and consistency with other terms.

The FAA partially concurs. One commenter stated that there is no mention of size distribution in the definition. There ought not to be—the definition applies to individual drops. There is no ''freezing rain distribution'' and to attempt to define such would add unnecessary complexity to this definition. This applies to freezing drizzle as well.

Another commenter notes the work that is being done to characterize freezing rain and freezing drizzle in terms of drop size, liquid water content, etc. and is concerned with possible conflicts between this definition and what may come of that work. The size definitions included in the proposal are those that appear in the Glossary of Meteorology; these are generally accepted by meteorologists and have been for some time. It is highly unlikely that new definitions of these terms will arise from the characterization work. Rather, the results of the environmental characterization will serve to provide envelopes of possible environmental conditions where freezing rain and freezing drizzle are found, in enough detail to enable engineering specifications for possible compliance to an expanded icing envelope, and avoid conflict with existing terminology.

Another commenter suggests that the freezing rain and freezing drizzle definitions be expanded to include the atmospheric conditions often associated with them. The FAA believes this could be misleading since the conditions a) can overlap for freezing rain and freezing drizzle and b) can be present

with an absence of either freezing rain or freezing drizzle.

It is probably not advisable to include a caveat in the definition specifying that freezing rain contain ''an appreciable amount of water in drops'' which have diameters greater than 0.5 mm, as one commenter suggested. The phrase ''appreciable amount'' adds ambiguity to the definition.

There were also good suggestions for clarifying the language.

The definition has been revised in the notice.

*30. Reword Definition of ''Freezing Precipitation'' To Clarify Distinction Between ''Freezing Precipitation'' and ''Supercooled Large Drops''*

The FAA concurs that there was little distinction between the proposed definitions. The definition of ''Freezing Precipitation'' has been revised in the notice.

*31. Reword the Definition of ''Freezing Drizzle (FZDZ)'' for Improved Clarity, Accuracy, Utility, and Consistency With Other Terms*

The comments are very similar to those for freezing rain; see above for some specifics. The FAA concurs with many of these and the definition has been revised in the notice.

*32. Request To Revise Definition of ''Icing in Precipitation''*

Several commenters requested that the FAA reword the definition of ''icing in precipitation'' for improved clarity, accuracy, utility, or consistency with other terms.

The FAA concurs with most of the comments and has revised the definition accordingly.

*33. Reword the definition of ''Icing in Cloud'' for Improved Clarity, Accuracy, Utility, and Consistency With Other Terms*

One commenter noted that even outside of visible cloud, the atmosphere will contain a distribution of droplet sizes and diameters of less than 50 microns will be present. Actually these smaller ''cloud droplets'' may be present, that is, they are not always there. The FAA prefers to include the ''visible cloud'' requirement, which implies substantial numbers of cloud droplets and is what differentiates this condition from ''Icing in Precipitation.''

The FAA concurs with most of the remaining comments and the definition has been revised in the notice.

*34. Reword the Definition of ''Supercooled Large Droplets'' for Improved Clarity, Accuracy, Utility, and Consistency With Other Terms*

The FAA concurs and proposes the definition has been revised in the notice.

**Note:** The new definition provides a definition of an atmospheric phenomenon and is considered sufficient without reference to icing standards or possible effects on aircraft safety. The terms ''FZRA'' and ''FZDZ'' are used by weather providers to indicate SLD icing conditions.

*35. Request To Delete ''Supercooled Drizzle Drops'' From List of Defined Terms*

One commenters requested that the FAA delete the term ''Supercooled Drizzle Drops'' from the list because the term has had only limited use.

The FAA does not concur. Although it is true that the term has not appeared extensively, it has appeared with sufficient frequency to justify inclusion in the notice.

*36. Request To Expand Definition of ''Appendix C Icing Conditions''*

One commenter requested that the FAA include in the final notice a definition of ''Appendix C Icing Conditions'' expanded to include and explain variables used in defining the icing envelopes.

The FAA concurs that identification of these variables is appropriate in the notice, and the definition has been expanded accordingly. However, technical explanation and use of these variables are addressed in FAA advisory circulars on certification.

*37. Request To Include Additional Meteorological Terms in List of Defined Terms*

One commenter requested that the FAA include ice crystals, hail, snow, sleet, graupel, and related meteorological terms in the list of definitions.

The FAA does not concur. During the 1996 FAA icing conference the FAA was given the task of redefining those icing terms that, in the judgement of the FAA, were either confusing or were otherwise in need of clarification. The terms proposed for redefinition and clarification are those icing terms which fit the criteria expressed in the FAA Icing Plan developed using the recommendations from the conference.

The FAA does not agree that the terms proposed by the commenter are confusing or are unclear so as to require redefinition.

*38. Request for Removal of Contradictions in CFR Material Pertaining to Severe Icing*

One commenter requested that the FAA remove contradictions that exist in the CFR material (in particular, with respect to usage of term ''severe icing''), so that the material presented in the docket does not continue to sanction these contradictions.

Atmospheric icing conditions are highly variable and can exceed in-flight icing standards defined by the airplane airworthiness requirements. Therefore, the FAA concurs, and plans to revise the FARs which are in conflict with the proposed definition of severe icing. The National Weather Service, however, is required to forecast and report severe atmospheric conditions, including thunderstorms and severe icing. Pilot reports, experience, and other parameters are used by meteorologists to define severe icing conditions, regardless of airplane ice protection provisions, size, or performance. Severe icing conditions for small airplanes may not be severe for large air transports. The FAA will provide the requirement that the National Weather Service replace the term ''severe icing'' with ''heavy icing.'' Resolution of the terminology conflict requires that the FAA regulations be revised and successful collaboration with the National Weather Service be achieved.

*39. Request To Include ''Sandpaper Ice'' in List of Defined Terms*

Several commenters requested that the term ''sandpaper ice,'' as defined in Advisory Circular AC 25–7A, Para. 20(a)(3), be added to the list of definitions.

The FAA does not concur. The notice is intended as a compendium of operational definitions. Inclusion of a technical term pertaining to the certification of aircraft is deemed inappropriate in this compendium.

*40. Request To Include ''Runback Ice'' and ''Residual Ice'' in List of Defined Terms*

The FAA concurs. Definitions of runback ice, residual ice, and inter-cycle ice have been added to the notice.

*41. Include ''Supercooled Liquid Water'' in List. Use Term Exclusively*

One commenter requested that the term ''supercooled liquid water'' be included in the list of definitions and that this term be used exclusively where there are currently references to ''supercooled liquid water,'' ''supercooled water drop,'' or ''supercooled water droplets.''

The FAA partially concurs. The term ''supercooled drops/droplets'' will be adopted as equivalent to ''supercooled liquid'' and ''supercooled liquid water drops.'' The term ''supercooled drops/droplets'' has been added to the list of definitions and references to ''supercooled liquid water'' and ''supercooled liquid water drops'' have been deleted.

**Conclusion**

After consideration of the comments submitted in response to the notice of intent, the FAA has determined that the icing terminology, as amended following review of the comments, does not conflict with the current regulations and the criteria set forth in the FAA Icing Plan.

Issued in Washington, DC, on April 30, 2003.

**Louis C. Cusimano,**

*Deputy Director, Flight Standards Service.*

[FR Doc. 03–11237 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34117]**

### Pemiscot County Port Authority—Construction Exemption—Pemiscot County, MO

**AGENCY:** Surface Transportation Board, Transportation.

**ACTION:** Notice of availability of Environmental Assessment and request for comments.

**SUMMARY:** The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) has prepared an Environmental Assessment (EA) in response to a petition filed by the Pemiscot County Port Authority. The petition seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct and operate a rail line between Hayti, Missouri and the Pemiscot Port. The EA identifies the natural and man-made resources in the area of the proposed rail line and analyzes the potential impacts of the rail line construction and operation on these resources. Based on the information provided from all sources to date and its independent analysis, SEA preliminarily concludes that construction and operation of the proposed rail line would have no significant environmental impacts if the Board imposes and the Pemiscot County Port Authority implements the recommended mitigation measures set forth in this EA. Copies of the EA have been served on all interested parties and will be made available to additional parties upon request. The entire EA is also available on the Board's Web site (*http://www.stb.dot.gov*) by clicking on the ''Decisions'' button and searching by service date (May 7, 2003) or Docket Number (FD 34117). SEA will consider all comments received when making its final environmental recommendations to the Board. The Board will then consider SEA's final recommendations and the complete environmental record in making its final decision in this proceeding.

**DATES:** The EA is available for public review and comment. Comments must be postmarked June 6, 2003.

**ADDRESSES:** Comments (an original and 10 copies) should be sent in writing to: Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423. The lower left corner of the envelope should be marked: Attention: Mr. David Navecky, Environmental Comments, Finance Docket No. 34117.

**FOR FURTHER INFORMATION CONTACT:** David Navecky by mail at the address above, by telephone at (202) 565–1593 (FIRS for the hearing impaired (1–800–877–8339)), or by e-mail at *naveckyd@stb.dot.gov.*

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–11151 Filed 5–6–03; 8:45 am]

**BILLING CODE 4910–00–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–355 (Sub–No. 27X)]**

### Springfield Terminal Railway Company—Discontinuance of Service Exemption—Portion of Bemis Branch, in Middlesex County, MA

Springfield Terminal Railway Company (ST) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over a 2.11-mile line of railroad [1] known as the Bemis Branch extending from milepost 8.83 to milepost 10.94,[2] in Waltham and Watertown, Middlesex County, MA. The line traverses United States Postal Service Zip Codes 02451 and 02472.

ST has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 6, 2003,[3] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] must be filed by May 19, 2003. Petitions to reopen must be filed by May 27, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to ST's representative: Katherine E. Potter, Esq.,

[1] ST acquired its leasehold interest in the line from Boston and Maine Corporation (B&M), an affiliate of ST, in *D&H Ry—Lease & Trackage Rights Exemp. Springfield Term.,* 4 I.C.C.2d 322 (1988). ST states that, prior to the effective date of this discontinuance, title to the line was or will be acquired by third parties.

[2] B&M was authorized to abandon the line in *Boston and Maine Corporation—Abandonment—in Middlesex County, MA,* STB Docket No. AB–32 (Sub-No. 89) (STB served Aug. 16, 2000), and consummated the abandonment in June 2001. By letter filed on April 30, 2003, ST supplemented its notice of exemption to explain that it did not seek approval to discontinue its operations at the time of the B&M abandonment because it was unaware that such approval was required.

[3] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required under 49 CFR 1105.6(c) and 1105.8. Nevertheless, ST filed an environmental report with its notice. The Board's Section of Environmental Analysis (SEA) issued an environmental assessment on May 31, 2000, in connection with B&M's abandonment of the line.

[4] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Springfield Terminal Railway Company, Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 1, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–11308 Filed 5–6–03; 8:45 am]

**BILLING CODE 4915–00–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Wholesale Dealers Applications, Letterheads, and Notices Relating to Operations (Variations in Format or Preparation of Records).

**DATES:** Written comments should be received on or before July 7, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Wholesale Dealers Applications, Letterheads, and Notices Relating to Operations (Variations in Format or Preparation of Records).

*OMB Number:* 1513–0067.

*Recordkeeping Requirement ID Number:* TTB REC 5170/6.

*Abstract:* This recordkeeping requirement pertains only to those wholesale liquor and beer dealers submitting applications for a variance from the regulations dealing with preparation, format, type, or place of retention of records of receipt or disposition for alcoholic beverages. The record retention requirement for this information collection is 6 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 1,029.

*Estimated Total Annual Burden Hours:* 515.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 30, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–11317 Filed 5–6–03; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Application For An Industrial Alcohol User Permit and Industrial Alcohol Bond.

**DATES:** Written comments should be received on or before July 7, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW, Washington, DC 20226, telephone (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application For An Industrial Alcohol User Permit and Industrial Alcohol Bond.

*OMB Number:* 1513–0028.

*Form Number:* TTB F 5150.22 and TTB F 5150.25.

*Abstract:* TTB F 5150.22 is used to determine the eligibility of the applicant to engage in certain operations and the extent of the operations for the production and distribution of specially denatured spirits (alcohol/rum). This form identifies the location of the premises and establishes whether the premises will be in conformity with Federal laws and regulations. TTB F 5150.25 provides notification that sufficient bond coverage has been obtained prior to the issuance of a permit.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 738.

*Estimated Total Annual Burden Hours:* 1,476.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 28, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–11318 Filed 5–6–03; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Distilled Spirits Records and Monthly Report of Production Operations.

**DATES:** Written comments should be received on or before July 7, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Distilled Spirits Records and Monthly Report of Production Operations.

*OMB Number:* 1513–0047.

*Form Number:* TTB F 5110.40.

*Recordkeeping Requirement ID Number:* TTB REC 5110/01.

*Abstract:* The information collected is used to account for the proprietor's tax liability, adequacy of the bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, and plan efficient allocation of field resources, audit plant operations and compilation of statistics for government economic analysis. The record retention requirement for this information collection is 4 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 150.

*Estimated Total Annual Burden Hours:* 3,600.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 28, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–11319 Filed 5–6–03; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Miscellaneous Requests and Notices for Distilled Spirits Plants.

**DATES:** Written comments should be received on or before July 7, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Miscellaneous Requests and Notices for Distilled Spirits Plants.

*OMB Number:* 1513–0048.

*Form Number:* TTB F 5110.41.

*Abstract:* The information provided by applicants assists TTB in determining eligibility and providing for registration. These eligibility requirements are for persons who wish to establish distilled spirits plant (DSP) operations. Regulations in 27 CFR 19.151 and 19.186 require that any person who intends to establish a DSP or succeed to the proprietorship of an existing DSP shall, before commencing operations, make application and receive notice of registration on TTB F 5110.41.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 328.

*Estimated Total Annual Burden Hours:* 1,620.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 28, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–11320 Filed 5–6–03; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Letterhead Applications and Notices Relating to Wine.

**DATES:** Written comments should be received on or before July 7, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Letterhead Applications and Notices Relating to Wine.

*OMB Number:* 1513–0057.

*Recordkeeping Requirement ID Number:* TTB REC 5120/2.

*Abstract:* Letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue or defraud consumers. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 1,650.

*Estimated Total Annual Burden Hours:* 825.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 30, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–11321 Filed 5–6–03; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Letterhead Applications and Notices Relating to Tax-Free Alcohol.

**DATES:** Written comments should be received on or before July 7, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Letterhead Applications and Notices Relating to Tax-Free Alcohol.

*OMB Number:* 1513–0060.

*Recordkeeping Requirement ID Number:* TTB REC 5150/4.

*Abstract:* Tax-free alcohol is used for nonbeverage purposes in scientific research and medicinal uses by educational organizations, hospitals, laboratories, etc. The use of alcohol free of tax is regulated to prevent illegal diverson to taxable beverage use. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 4,444.

*Estimated Total Annual Burden Hours:* 2,222.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 30, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–11322 Filed 5–6–03; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Stills: Notices, Registration, and Records.

**DATES:** Written comments should be received on or before July 7, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Stills: Notices, Registration, and Records.

*OMB Number:* 1513–0063.

*Recordkeeping Requirement ID Number:* TTB REC 5150/8.

*Abstract:* The information is used to account for and regulate the distillation of distilled spirits to protect the revenue and to provide for identification of distillers. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 10.

*Estimated Total Annual Burden Hours:* 21.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 30, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–11323 Filed 5–6–03; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Stills: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.

**DATES:** Written comments should be received on or before July 7, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Stills: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.

*OMB Number:* 1513–0066.

*Recordkeeping Requirement ID Number:* TB REC 51170/3.

*Abstract:* The primary objective of this recordkeeping requirement is revenue protection by establishment of accountability data available for audit purposes. A second objective, consumer protection, is afforded by subject record traceability of alcoholic beverages to the retail liquor dealer level of distribution in the event of defective products. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit, State, Local or Tribal Government.

*Estimated Number of Respondents:* 455,000.

*Estimated Total Annual Burden Hours:* 1 Hour.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 30, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–11324 Filed 5–6–03; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Authorization to Furnish Financial Information and Certificate of Compliance.

**DATES:** Written comments should be received on or before July 7, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Authorization to Furnish Information and Certificate of Compliance.

*OMB Number:* 1513–0004.

*Form Number:* TTB F 5030.6.

*Abstract:* The Right to Financial Privacy Act of 1978 limits access to records held by financial institutions and provides for certain procedures to gain access to the information. TTB F 5030.6 serves as both a customer authorization for TTB to receive information and as the required certification to the financial institution.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 2,000.

*Estimated Total Annual Burden Hours:* 500.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 28, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–11325 Filed 5–6–03; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Application to Establish and Operate Wine Premises, Wine Bond.

**DATES:** Written comments should be received on or before July 7, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226. (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application to Establish and Operate Wine Premises, Wine Bond.

*OMB Number:* 1513–0009.

*Form Number:* TTB F 5120.25, TTB F 5120.36.

*Abstract:* TTB F 5120.25 is used to establish the qualifications of an applicant for a wine premises. The applicant certifies the intention to produce and/or store a specified amount of wine and take certain precautions to protect it from unauthorized use. TTB F 5120.36 is used by the proprietor and a surety company as a contract to ensure the payment of the wine excise tax.

*Current Actions:* There are no changes to this information collection and it is

being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 1,720.

*Estimated Total Annual Burden Hours:* 810.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 28, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–11326 Filed 5–6–03; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.

**DATES:** Written comments should be received on or before July 7, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.

*OMB Number:* 1513–0010.

*Form Number:* TTB F 5120.29.

*Abstract:* TTB F 5120.29 is used to determine the classification of wines for labeling and consumer protection. The form describes the person filing, type of product to be made and restrictions for the labeling and manufacturing. The form is also used to audit a product.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 600.

*Estimated Total Annual Burden Hours:* 1,200.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 28, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–11327 Filed 5–6–03; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Power of Attorney.

**DATES:** Written comments should be received on or before July 7, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Power of Attorney.

*OMB Number:* 1513–0014.

*Form Number:* TTB F 5000.8.

*Abstract:* TTB F 5000.8 delegates authority to a specific individual to sign documents on behalf of an applicant or principal (alcohol and tobacco permittees). Many of the documents that are submitted to TTB entail binding legal commitments by the applicant/permittee and any omission or falsification may subject the applicant/permittee to penalties provided in the law.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 5,000.

*Estimated Total Annual Burden Hours:* 3,000.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 28, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–11328 Filed 5–6–03; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Drawback on Wines Exported.

**DATES:** Written comments should be received on or before July 7, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Kristi Colon, Alcohol and Tobacco Tax and Trade Bureau, Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Drawback on Wines Exported.

*OMB Number:* 1513–0016.

*Form Number:* TTB F 1582–A (5120.24).

*Abstract:* When proprietors export wines that have been produced, packaged, manufactured, or bottled in the U.S., they file a claim for drawback or refund for the taxes that have already been paid on the wine. The information on the form notifies TTB that the wine was in fact exported and helps to prevent fraudulent claims.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 900.

*Estimated Total Annual Burden Hours:* 2,025.

### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 28, 2003.

**William H. Foster,**

*Chief, Regulations and Procedures Division.*

[FR Doc. 03–11329 Filed 5–6–03; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request for Form 6252

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6252, Installment State Income.

**DATES:** Written comments should be received on or before July 7, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, at (202) 622–3179, or *Larnice.Mack@irs.gov,* or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Installment Sale Income.

*OMB Number:* 1545–0228.

*Form Number:* 6252.

*Abstract:* Internal Revenue Code section 453 provides that if real or personal property is disposed of at a gain and at least one payment is to be received in a tax year after the year of sale, the income is to be reported in installments, as payment is received. Form 6252 provides for the computation of income to be reported in the year of sale and in years after the year of sale. It also provides for the computation of installment sales between certain related parties required by Code section 453(e).

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business of other for-profit organizations, individuals or households, and farms.

*Estimated Number of Respondents:* 782,848.

*Estimated Time Per Respondent:* 3 hrs., 4 minutes.

*Estimated Total Annual Burden Hours:* 2,395,515.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 29, 2003.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03–11370 Filed 5–6–03; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Forms 6466 and 6467

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6466, Transmittal of Forms W–4 Reported Magnetically/Electronically, and Form 6467, Transmittal of Forms W–4 Reported Magnetically/Electronically (Continuation).

**DATES:** Written comments should be received on or before July 7, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Form 6466, Transmittal of Forms W–4 Reported Magnetically/Electronically, and Form 6467, Transmittal of Forms W–4 Reported Magnetically/Electronically (Continuation).

*OMB Number:* 1545–0314.

*Form Number:* Forms 6466 and 6467.

*Abstract:* Under regulation section 31.3402(f)(2)–1(g), employers are required to submit certain withholding certificates (Form W–4) to the Internal Revenue Service. Transmittal Form 6466 and the continuation sheet Form 6467 are submitted by an employer, or an authorized agent of the employer, who will be reporting submissions of Form W–4 on magnetic/electronic media.

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, farms and Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 100.

*Estimated Time Per Respondent:* 1 hour, 20 minutes.

*Estimated Total Annual Burden Hours:* 133.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2003.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03–11371 Filed 5–6–03; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Notice 1027

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 1027, How to Prepare Media Label for Form W–4.

**DATES:** Written comments should be received on or before July 7, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue

Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of notice should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* How to Prepare Media Label for Form W–4.

*OMB Number:* 1545–0410.

*Notice Number:* Notice 1027.

*Abstract:* Internal Revenue Code section 3402 requires all employers making payment of wages to withhold tax on such payments. Employers are further required under regulation section 31.3402(f)(2)–1(g) to submit certain withholding certificates (Form W–4) to the Internal Revenue Service. Notice 1027 is sent to employers who prefer to file this information on magnetic tape.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

*Estimated Number of Responses:* 400.

*Estimated Time Per Respondent:* 5 minutes.

*Estimated Total Annual Burden Hours:* 33.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 1, 2003.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03–11372 Filed 5–6–03; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions.

**DATES:** Written comments should be received on or before July 7, 2003, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of copies of the information collection should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions.

*OMB Number:* 1545–1432.

*Abstract:* This is a generic clearance for an undefined number of customer satisfaction and opinion surveys and focus group interviews to be conducted over the next three years. Surveys and focus groups conducted under the generic clearance are used by the Internal Revenue Service to determine levels of customer satisfaction, as well as determining issues that contribute to customer burden. This information will be used to make quality improvements to products and services.

*Current Actions:* We will be conducting different customer satisfaction and opinion surveys and focus group interviews during the next three years than in the past. At the present time, is not determined what these surveys and focus groups will be.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 372,359.

*Estimated Time Per Respondent:* 8 minutes.

*Estimated Total Annual Burden Hours:* 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 1, 2003.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 03–11373 Filed 5–6–03; 8:45 am]

**BILLING CODE 4830–01–P**


Federal Register

**Wednesday,**
**May 7, 2003**

## Part II

# Environmental Protection Agency

**40 CFR Part 63**

**National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing; Final Rule; Republication**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[OAR–2002–0035; FRL–7461–8]**

**RIN 2060–AG66**

## National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing

**Editorial Note:** Due to numerous errors this document is being reprinted in its entirety. It was originally printed in the **Federal Register** on Tuesday, April 29, 2003 at 68 FR 22975–23007.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action promulgates national emission standards for hazardous air pollutants (NESHAP) for existing and new asphalt processing and asphalt roofing manufacturing facilities. The EPA has identified asphalt processing and asphalt roofing manufacturing facilities as major sources of hazardous air pollutants (HAP) such as formaldehyde, hexane, hydrogen chloride (HCl), phenol, polycyclic organic matter (POM), and toluene. The final standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The total HAP reduction resulting from compliance with the rule is expected to be 86 megagrams per year (Mg/yr).

A variety of HAP are emitted from asphalt processing and asphalt roofing manufacturing source categories. The following HAP account for the majority (approximately 98 percent, based on the emission factors developed for the final rule) of the total HAP emissions: Formaldehyde, hexane, HCl (at asphalt processing facilities that use chlorinated catalysts), phenol, and toluene. The remaining two percent of the total HAP emissions is a combination of several different organic HAP, each contributing less than 0.5 percent to the total HAP emissions.

**EFFECTIVE DATE:** April 29, 2003.

**ADDRESSES:** The official public docket is the collection of materials that is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** For information concerning applicability and rule determinations, contact your State or local representative or appropriate EPA Regional Office representative. For information concerning rule development, contact Rick Colyer, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5262, electronic mail address, *colyer.rick@epa.gov.*

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* Categories and entities potentially regulated by this action:

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

| Category | NAICS [a] | | SIC [b] | |
|---|---|---|---|---|
| | Code | Description | Code | Description |
| Manufacturing | 324122 | Asphalt shingle and coating materials manufacturing. | 2952 | Asphalt felts and coating. |
| Manufacturing | 32411 | Petroleum refineries | 2911 | Petroleum refining. |
| Federal Government | Not affected | | Not affected | |
| State/Local/Tribal Government | Not affected | | Not affected. | |

[a] Standard Industrial Classification Code.
[b] North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in §§ 63.8681 and 63.8682 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0035. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

*Electronic Docket Access.* You may access the final rule electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled ''Docket.'' Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted

material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility previously identified.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

*Judicial Review.* The NESHAP for asphalt processing and asphalt roofing manufacturing was proposed on November 21, 2001 (66 FR 58610). Under section 307(b)(1) of the CAA, judicial review of the NESHAP is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 30, 2003. Only those objections to the rule that were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

*Background Information Document.* The EPA proposed the NESHAP for asphalt processing and asphalt roofing manufacturing on November 21, 2001 (66 FR 58610) and received 21 comment letters on the proposal. In response to the public comments, EPA adjusted the final NESHAP where appropriate. A background information document (BID) (''National Emission Standards for Hazardous Air Pollutants, Asphalt Processing and Asphalt Roofing Manufacturing, Summary of Public Comments and Responses,'' February 2003, EPA–453/R–03–005) containing EPA's responses to each public comment is available in Docket No. OAR–2002–0035.

*Outline.* The information presented in the preamble is organized as follows:



## I. Background

### *A. What Is the Statutory Authority for the Final NESHAP?*

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP emissions and to establish NESHAP for the listed source categories and subcategories. A major source of HAP is any stationary source or group of stationary sources within a contiguous area under common control that emits or has the potential to emit, considering controls, in the aggregate, 9.1 Mg/yr (10 tons per year (tpy)) or more of any single HAP or 22.7 Mg/yr (25 tpy) or more of any combination of HAP. Based on the emissions data collected for this rulemaking, asphalt processing and asphalt roofing manufacturing facilities have the potential to be major sources of HAP.

The EPA listed asphalt processing and asphalt roofing manufacturing categories of major sources as separate source categories on July 16, 1992 (57 FR 31576). However, because these processes are closely related and are often collocated, we are regulating emissions from both source categories under a single NESHAP.

### *B. What Criteria Were Used in the Development of NESHAP?*

Section 112(c)(2) of the CAA requires that we establish NESHAP for control of HAP from both existing and new major sources, based upon the criteria set out in section 112(d). The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as the MACT.

The minimum control level allowed for NESHAP (the minimum level of stringency for MACT) is the so-called ''MACT floor,'' as defined under section 112(d)(3) of the CAA. The MACT floor for existing sources is the emission limitation achieved by the average of the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the average of the best-performing five sources for categories or subcategories with fewer than 30 sources. For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source.

In developing the final NESHAP, we considered control options that are more stringent than the MACT floor (so-called beyond-the-floor control options), taking into consideration the cost of achieving the emission reductions, and any non-air quality health and environmental impacts, and energy requirements.

In the final rule, the EPA is promulgating standards for both existing

and new sources consistent with these statutory requirements.

*C. What Operations Constitute Asphalt Processing and Asphalt Roofing Manufacture?*

The final rule regulates both asphalt processing and asphalt roofing manufacturing operations. Asphalt processing and asphalt roofing manufacturing operations can be stand-alone or integrated with each other, or with related operations such as wet-formed fiberglass mat manufacturing. In addition, asphalt is processed at some petroleum refineries.

Processed asphalt is produced using asphalt flux as the raw material. Asphalt flux is a product that is obtained in the last stages of fractional distillation of crude oil. Asphalt is processed to change its physical properties for use in various end products (*e.g.*, paving applications, roofing products). In asphalt processing, heated asphalt flux is taken from storage and charged to a heated blowing still where air is bubbled up through the flux. This process raises the softening temperature of the asphalt. The blowing process also decreases the penetration rate of the asphalt when applied to the roofing substrate. Some processing operations use a catalyst (*e.g.*, ferric chloride, phosphoric acid) in the blowing still to promote the oxidation of asphalt. The need to use catalyst is primarily driven by the type of feedstock used. Certain low-quality feedstocks (which are used, however, by necessity because substitute feedstocks are not available, see 66 FR 58619) require catalyst to be used to attain desired product specifications.

In asphalt roofing manufacturing, processed or modified asphalt (also called modified bitumen) is applied to a fibrous substrate (typically made of fiberglass or organic felt) to produce the following types of roofing products: Shingles, laminated shingles, smooth-surfaced roll roofing, mineral-surfaced roll roofing, and saturated felt roll roofing. Modified asphalt is asphalt that is mixed with polymer modifiers (which add strength and durability to the asphalt) and is typically used to produce roll roofing products. A roofing manufacturing line is a largely continuous operation, with line stoppages occurring primarily due to breaks in the substrate.

In asphalt roofing manufacturing, asphalt is typically mixed with filler materials before application to the substrate. If a fiberglass substrate is used, coating asphalt is applied by a coater. If an organic substrate is used, a saturator and wet looper are typically used prior to the coater to provide additional time for the asphalt to impregnate the substrate. The type of final product being manufactured determines the process steps that follow the coating or impregnation steps.

For shingles and mineral-surfaced roll roofing, granules are applied to the hot surface of the coated substrate. This step is omitted in manufacture of smooth-surfaced and saturated felt roll roofing. In shingle manufacturing, a strip of sealant (typically oxidized or modified asphalt) is applied to the back of the product after it has cooled. This sealant strip, which is heated by the sun after the roofing product is installed, provides some adhesion and sealing between layers of roofing product. In shingle manufacture, the coated substrate is cut into the desired size. Multiple single-ply shingles can be glued together (typically using oxidized or modified asphalt as an adhesive) to produce laminated or dimensional shingles. When asphalt roofing manufacturing lines are collocated with asphalt processing operations, the two operations typically share storage and process tanks.

*D. What Are the HAP Emissions and HAP Emission Sources?*

Asphalt is essentially the material that remains after fractional distillation of crude oil, with petroleum coke being the only other fraction available for recovery. Consequently, asphalt consists primarily of heavy organic compounds with low boiling points. Hazardous air pollutants are volatilized from asphalt as it is heated and agitated during processing and roofing manufacturing operations. Hazardous air pollutants are also volatilized during asphalt processing as a result of the oxidation reactions that occur in the blowing still.

Because the HAP volatilized from asphalt generally have low boiling points, they can be present in both condensed particulate matter (PM) and gaseous forms, depending on the temperature of the vent or exhaust gas. When the temperature of the vent gas is below the boiling point of a HAP, the HAP will condense into particulate form (*i.e.*, a cooler vent gas will have more HAP in the form of condensed PM, whereas a hotter vent stream will contain mostly gaseous HAP).

The following types of equipment are sources of PM HAP and gaseous HAP emissions: Asphalt storage and process tanks, asphalt blowing stills, asphalt loading racks, saturators, wet loopers, coating mixers, coaters, sealant applicators, and adhesive applicators. The majority of uncontrolled HAP emissions from an asphalt processing and asphalt roofing manufacturing facility (approximately 50 percent, based on the emission factors developed for this rulemaking) are contributed by the blowing stills, followed by the process equipment used to apply asphalt to the roofing substrate (*e.g.*, coating mixers, saturators, wet loopers, and coaters). Asphalt processing operations can also be sources of HCl, if a chlorinated catalyst is introduced into the blowing still during processing. Since most blowing still emissions are controlled by a combustion device, chlorine compounds present in the blowing still exhaust are oxidized and emitted as HCl from the blowing still combustion device outlet.

*E. What Are the Health Effects Associated With the HAP Emitted From the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories?*

A variety of HAP are emitted from asphalt processing and asphalt roofing manufacturing source categories. The following HAP account for the majority (approximately 98 percent, based on the emission factors developed for this rulemaking) of the total HAP emissions: Formaldehyde, hexane, HCl (at asphalt processing facilities that use chlorinated catalysts), phenol, and toluene. The remaining two percent of the total HAP emissions is a combination of several different organic HAP, each contributing less than 0.5 percent to the total HAP emissions.

The HAP emitted from these source categories (controlled under the final rule) are associated with a variety of adverse health effects. These adverse health effects include both chronic health disorders (*e.g.*, irritation of the lung, skin, and mucous membranes, effects on the central nervous system, and damage to the blood and liver) and acute health disorders (*e.g.*, respiratory irritation and central nervous system effects such as drowsiness, headache, and nausea). The EPA has classified two of the HAP (formaldehyde and POM) as probable human carcinogens.

The EPA does not have the type of current detailed data on each of the facilities and the people living around the facilities covered by today's rule for this source category that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and the potential for resultant health effects. Therefore, EPA does not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, and this

rule reduces emissions, subsequent exposures would be reduced.

*F. What Was the Basis for the Proposed Standards?*

The EPA proposed standards for the HAP-emitting equipment at the two affected sources: Each asphalt processing facility (blowing stills, asphalt flux storage tanks, oxidized asphalt storage tanks, and asphalt loading racks) and each asphalt roofing manufacturing line (saturator, a wet looper, a coater, coating mixers, sealant applicators, adhesive applicators, and associated storage tanks).

The EPA determined the MACT floors for existing and new sources for each type of process equipment used in asphalt processing facilities and in asphalt roofing manufacturing lines. For each equipment type, the equipment pieces were ranked in order of level of control. Combustion devices were ranked over PM control devices because combustion devices reduce both gaseous HAP and condensed HAP.

At proposal, a combustion device operating at or above 1200 °F was the basis for the MACT floor for blowing stills, asphalt storage tanks with a capacity of 1.93 megagrams or greater, and loading racks at existing, new, and reconstructed affected sources. Blowing stills that use a chlorinated catalyst produce a vent stream that contains chlorinated organic compounds. When this vent stream is sent to a combustion device, the chlorinated organic compounds are oxidized to HCl which is a HAP. Because requiring facilities to use non-chlorinated catalysts is not feasible due to the need to produce oxidized asphalt of a given quality (see generally 66 FR 58618), and because no facilities control HCl emissions, the proposed MACT floor for HCl emissions from blowing stills using catalyst was based on no control of those emissions.

With the exception of asphalt storage tanks, the MACT floor for equipment at existing asphalt roofing manufacturing lines (coaters, saturators, wet loopers, coating mixers and sealant and adhesive applicators) was based on a PM control device complying with the new source performance standards (NSPS) for asphalt processing and roofing manufacture (asphalt NSPS) (40 CFR part 60, subpart UU) PM emission limits. The floor for saturators, coaters, and coating mixers at new and reconstructed affected sources was based on a combustion device operating at or above 1200 °F. For wet loopers at existing, new, and reconstructed affected sources, the MACT floor was based on a PM control device that achieves the asphalt NSPS PM emission limits. For storage tanks with capacity of 1.93 megagrams or greater at existing, new, and reconstructed asphalt roofing manufacturing lines, the MACT floor was based on a combustion device operating at or above 1200 °F.

The EPA evaluated potential options for achieving emission reductions more stringent than the floor (beyond-the-floor options) for three groups of equipment: (1) Saturators, wet loopers, coaters, coating mixers, and sealant and adhesive applicators at existing sources; (2) blowing stills that use a chlorinated catalyst at existing, new, and reconstructed sources; and (3) wet loopers at new and reconstructed sources. For all other equipment (blowing stills, loading racks, and storage tanks at existing, new, and reconstructed sources; and for saturators, coaters, coating mixers, and sealant and adhesive applicators at new and reconstructed sources), there are no known technologies in use at asphalt processing or roofing manufacturing facilities or similar sources that would be capable of achieving a greater emission reduction than a combustion device operating with a minimum operating temperature of 1200 °F. Thus, EPA did not consider beyond-the-floor options for these types of equipment.

For saturators, wet loopers, coating mixers, coaters, and sealant and adhesive applicators at existing affected sources, the level of control achieved by a combustion device with a minimum operating temperature of 1200 °F was identified as the only beyond-the-floor option. However, due to the cost per megagram of HAP reduction ($616,000) and the increase in criteria pollutant emissions, requiring the level of control achieved by a combustion device for saturators, wet loopers, coaters, coating mixers, and sealant and adhesive applicators at existing sources was not a justifiable option.

For blowing stills that use chlorinated catalysts, emissions of HCl can be reduced by a gas scrubber using caustic scrubbing media. However, since gas scrubbing has not been demonstrated as an effective technology for controlling HCl emissions from asphalt processing and due to the potentially high cost per megagram of HCl reduced ($23,900), the additional cost of going beyond-the-floor was not warranted. Nor is process substitution a viable option for controlling HCl emissions, as noted above. Therefore, the MACT for HCl emissions from blowing stills using catalyst was based on no emission reduction. For wet loopers, EPA considered the level of control of a combustion device operating at a minimum of 1200 °F as a beyond-the-floor option. Because controlling wet loopers at new affected sources was expected to add minimal if any cost to the total control cost, the MACT for wet loopers at new or reconstructed affected sources was based on a combustion device operating at a minimum of 1200 °F. See generally 66 FR 58618–621 and the memorandum ''Documentation of Existing and New Source Maximum Achievable Control Technology (MACT) Floors for the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Asphalt Processing and Asphalt Roofing Manufacturing'' (Docket No. OAR–2002–0035).

With the exception of standards for certain tanks and loading racks, EPA is adopting all of these standards (and analysis) in the final rule.

## II. Summary of the Final Standards

*A. Does the Final NESHAP Apply to Me?*

The final rule applies to you if you process asphalt (at stand-alone facilities or collocated with asphalt roofing manufacturing facilities or petroleum refineries) or manufacture asphalt roofing products at a facility that is a major source of HAP emissions. Major sources of HAP are those that emit or have the potential to emit at least 10 tpy of any one HAP or 25 tpy of any combination of HAP. All HAP emission sources at a facility, not just those related to asphalt processing or roofing manufacture, must be considered in determining major source status. Put another way, the final rule may apply to you even if the HAP emissions from your asphalt roofing products manufacturing and asphalt processing operations do not themselves exceed the major source threshold levels given above. If your facility is determined to be an area source (*i.e.*, not a major source), you would not be subject to the final rule.

For the storage tanks at asphalt processing and asphalt roofing manufacturing facilities regulated by the final NESHAP, the potential exists for these tanks to already be subject to an existing emission standard: The petroleum refinery NESHAP (40 CFR part 63, subpart CC), or standards of performance for volatile organic liquid storage vessels (40 CFR part 60, subparts K, Ka, and Kb). Storage tanks that are subject to those standards are not subject to the requirements of the asphalt rule since the control requirements specified by those standards for fixed roof storage tanks (used in the asphalt processing and asphalt roofing manufacturing industry) are as stringent as the standards

specified in the asphalt rule, and so regulation of these tanks under the asphalt rule would be duplicative, imposing costs without any environmental benefit.

The EPA also recognizes that asphalt storage tanks, blowing stills, saturators, wet loopers, and coaters at asphalt processing and asphalt roofing manufacturing facilities could be subject to both the final NESHAP and the asphalt NSPS. In cases where the requirements of the rules overlap, the final rule specifies that facilities are required to comply only with the asphalt NESHAP. However, any storage tank with a capacity less than 1.93 megagrams that is subject to the asphalt NSPS but not regulated under the asphalt NESHAP must comply with the asphalt NSPS.

Another instance where we are excluding equipment involved in asphalt roofing manufacturing from the final rule, due to regulatory overlap involves, wet-formed fiberglass mat production. Although wet-formed fiberglass mat is produced at both stand-alone facilities and those collocated with asphalt processing and roofing facilities, HAP emissions from wet-formed fiberglass mat manufacturing processes are regulated by another NESHAP (40 CFR part 63, subpart HHHH).

The final rule does not regulate asphalt processing and asphalt roofing manufacturing equipment that is used solely for research and development activities.

*B. What Are the Affected Sources?*

The two affected sources are defined as each asphalt processing facility and each asphalt roofing manufacturing line. An asphalt processing facility consists of one or more asphalt flux blowing stills, asphalt flux storage tanks storing asphalt flux intended for processing in the blowing stills, oxidized asphalt storage tanks, and oxidized asphalt loading racks. An asphalt roofing manufacturing line consists of a saturator (including wet looper) and/or a coater and their associated coating mixers, sealant applicators, adhesive applicators, and asphalt storage and process tanks.

To reduce repetition in the final NESHAP, we have separated asphalt storage tanks into two groups. Group 1 asphalt storage tanks: Have a capacity of 177 cubic meters (47,000 gallons) of asphalt or greater and either store asphalt at a maximum temperature of 260 °C (500 °F) or greater, or have a maximum true vapor pressure of 10.4 kiloPascals (kPa) (1.5 pounds per square inch absolute, psia) or greater. Group 2 asphalt storage tanks are those tanks with a capacity of 1.93 Mg of asphalt or greater that are not Group 1 asphalt storage tanks.

Asphalt storage tanks at asphalt processing and asphalt roofing manufacturing facilities that are collocated may be shared by the two operations. If the asphalt roofing manufacturing line is collocated with an asphalt processing facility, the storage tanks that receive asphalt directly from the on-site blowing stills are defined as part of the asphalt processing affected source.

A facility that manufactures asphalt roofing may have more than one manufacturing line. At these facilities, asphalt storage tanks and sealant and adhesive applicators may be shared by roofing manufacturing lines. A shared storage tank is considered part of the asphalt roofing manufacturing line to which the tank supplies the greatest amount of asphalt on an annual basis. Similarly, a sealant or adhesive applicator that is shared by two or more asphalt roofing manufacturing lines is considered part of the line that provides the greatest throughput to the applicator on an annual basis. Recordkeeping provisions documenting these equipment allocations are found in § 63.8694(d) of the final rule.

This definition of affected source is also used to determine if new source standards apply when subject equipment is ''constructed'' or ''reconstructed,'' as defined in the NESHAP General Provisions (40 CFR 63.2). We defined the affected source as the asphalt processing facility or asphalt roofing manufacturing line, rather than on a narrow equipment-piece basis, because we believe that it is inappropriate for small changes (*e.g.*, the addition of a sealant applicator to a manufacturing line) to trigger the new source emission limits for only part of the manufacturing line. For asphalt processing facilities, this is not a concern since the existing and new source standards are the same. However, the existing and new source standards are different for asphalt roofing manufacturing lines.

For asphalt roofing manufacturing lines, the new source emission limits would be triggered only when an entire new line is added or when an existing line is reconstructed. This is appropriate because the manufacture of roofing products is a continuous process, with the equipment for the different process steps arranged in sequence. Consequently, an increase in production cannot be achieved simply by adding a single piece of process equipment (*e.g.*, a coater). To increase production capacity, significant parts of the line would have to be modified or a new line would need to be constructed.

*C. What Pollutants Are Regulated by the Final NESHAP?*

The final rule establishes emission limits for two pollutants, total hydrocarbons (THC) and PM, each of which serves as a surrogate for HAP emitted by the process equipment.

Total Hydrocarbons

We are regulating total gaseous organic HAP emissions using THC as a surrogate. Total hydrocarbons are an appropriate surrogate for total HAP since organic HAP constitutes a significant portion of the THC, and because combustion controls are equally effective at reducing emissions of a wide range of organic compounds (including organic HAP emitted by asphalt processing and roofing manufacturing facilities and THC). Thus, reduction of organic HAP and THC from these sources is proportionate.

Particulate Matter

Particulate matter emitted from blowing stills consists of condensed organic hydrocarbons. For organic HAP that is present in condensed PM form, we are using PM as a surrogate. Similar to the THC surrogate for gaseous HAP, PM is an appropriate surrogate because it includes the HAP that are emitted as condensed PM. Because the reductions achieved by PM control devices are not pollutant-specific (*i.e.*, one type of PM is not preferentially reduced over another type of PM), controlling PM will result in a generally proportionate amount of condensed particulate organic HAP control.

*D. What Emission Limits Must I Meet?*

You must meet the emission limits that are summarized in Table 1 to the final rule. The emission limits are expressed in appropriate formats for the various process equipment being regulated. Depending on the piece of process equipment, you may have the option of complying with any of several formats. These formats include a PM emission limit (expressed in terms of kilograms of PM per Mg product manufactured), a THC percent reduction standard, a THC outlet concentration, a THC destruction efficiency standard (only for combustion devices that do not use auxiliary fuel), or a combustion efficiency standard.

The THC destruction efficiency and combustion efficiency standards are provided as an alternative to the THC percent reduction standard in the final rule because there are some emission

sources (*e.g.*, blowing stills) for which testing of the control device inlet is impractical.

Saturators (including wet loopers) and coaters at existing roofing manufacturing lines must meet PM emission limits based on the type of substrate used in manufacturing. At existing, reconstructed, and new asphalt roofing manufacturing lines, saturators (including wet loopers) and coaters must meet an opacity limit, and the emission capture system for these equipment must meet a visible emissions standard. The final rule also provides the option for Group 2 asphalt storage tanks, saturators (including wet loopers), and coaters at existing and new asphalt roofing manufacturing lines and coating mixers, sealant applicators, and adhesive applicators at existing asphalt roofing manufacturing lines to comply with either the THC or the combustion efficiency standards instead of the PM and opacity standards.

*E. When Must I Comply?*

Existing sources must comply with the final rule no later than May 1, 2006. The 3-year period is necessary to allow owners and operators sufficient time to design, purchase, and install emissions capture systems and air pollution control equipment. New or reconstructed sources must comply with the final rule at startup or April 29, 2003, whichever is later.

If your asphalt processing facility or asphalt roofing manufacturing line is located at a facility that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP after April 29, 2003, then any portion of the existing facility that is a new affected source or a reconstructed affected source must comply with all requirements of the final rule applicable to new sources upon startup after the facility becomes a major source or by April 29, 2003, whichever is later. All other parts of any facility to which the final rule applies must be in compliance with this subpart by 3 years after becoming a major source.

*F. What Are the Testing and Initial Compliance Requirements?*

You must conduct a performance test to demonstrate initial compliance with the final rule emission limits unless you are using the results from an acceptable previously-conducted emission test to demonstrate compliance with the emission limitations in the final rule, or you are using a control device that the EPA has already determined achieves the required HAP destruction efficiency.

If you choose to use the results from a previously-conducted emissions test, you must demonstrate to the Administrator's (or delegated authority) satisfaction that no changes have been made to the process since the time of the emissions test, the operating conditions and test methods used during testing conform to the requirements of the final rule, and the control device and process parameter values established during the previously-conducted emission test are used to demonstrate continuous compliance with the final rule.

An initial performance test is not required for boilers or process heaters with a design heat input capacity of 44 megawatts (MW) or greater or where the emissions are introduced into the flame zone of the boiler or process heater. Performance testing is also not required for flares that meet the design and operating requirements of 40 CFR 63.11(b). An initial performance test is not required for boilers and process heaters larger than 44 MW because they operate at high temperatures and residence times. When vent streams are introduced into the flame zone of these boilers and process heaters, over 98 percent reduction or an outlet concentration of 20 parts per million per volume (ppmv) is achieved. Therefore, a performance test is not necessary. We are not requiring performance testing of flares because percent reduction and outlet concentration cannot feasibly be measured at flares. The operating conditions in § 63.11 assure that the flare will be operated properly and achieve the requisite degree of destruction of organic HAP.

As specified in 40 CFR 63.7(e), performance tests must be conducted within the range of normal operating conditions. To ensure that compliance can be achieved over the entire range of operating conditions, the performance tests must be conducted under the operating conditions that reflect the highest rate of asphalt processing or roofing production reasonably expected to be achieved by the facility. For example, performance tests of roofing manufacturing line equipment must be conducted while operating under normal conditions and while manufacturing the roofing product that is expected to result in the greatest amount of HAP emissions.

For each performance test, you must conduct a minimum of three 1-hour test runs. Compliance is determined based on the average of the three test runs. To measure PM, you must use EPA test method 5A; for THC emissions, you must use EPA test method 25A.

For the THC destruction efficiency and combustion efficiency standards, you must measure emissions of THC, carbon monoxide ($CO_2$), and carbon dioxide ($CO_2$) to demonstrate compliance. For the THC outlet concentration you must measure emissions of THC to demonstrate compliance. You must use EPA test method 10 to measure CO emissions and EPA test method 3A to measure $CO_2$ emissions. The EPA test methods are contained in appendix A of 40 CFR part 60. You must demonstrate compliance with the PM emission limit, THC percent reduction standard, THC outlet concentration standard, THC destruction efficiency standard, and the combustion efficiency standard using the instructions and equations in the performance test requirement section of the final rule.

The final rule also contains opacity and visible emission standards for saturators (including wet loopers) and coaters and their emissions capture systems at existing, new, and reconstructed asphalt roofing manufacturing lines and an opacity standard for certain asphalt storage tanks at existing, new, and reconstructed asphalt processing facilities and roofing manufacturing lines. Opacity and visible emission compliance determinations must be made using EPA test methods 9 and 22 in appendix A of 40 CFR part 60, respectively.

The final rule allows you to demonstrate continuous compliance with the emission standards by monitoring control device operating parameters or by using continuous emission monitoring systems (CEMS) to directly measure emissions. Although the final rule does not require continuous monitoring of opacity, you can use continuous opacity monitoring systems (COMS) if you choose to do so since the opacity standard applies at all times.

If you choose to conduct parameter monitoring, you must install, calibrate, maintain, and operate a continuous parameter monitoring system (CPMS) to monitor the control device parameters. During the performance test, you must continuously monitor and record control device parameters and establish the monitoring parameter value(s) that constitute compliance with the emission limits if you plan to use parameter monitoring to demonstrate compliance following the initial performance test. If you use a combustion device to comply with the standards, you must record the average operating temperature. The temperature monitoring device must be installed at the exit of the combustion

zone or in the ductwork immediately downstream of the combustion zone, before any substantial heat loss occurs. If you use a control device to comply with the PM standards, you must record the device inlet gas temperature and pressure drop across the device. If you use electrostatic precipitators (ESP) to achieve compliance with the PM standard, you may record the voltage of the ESP as an alternative to the pressure drop across the ESP.

For combustion devices and PM control devices, the parameters must be monitored and values recorded in 15-minute blocks during each of three 1-hour test runs. If you use a control device other than a combustion device or PM control device to comply with the final rule, you must propose the appropriate monitoring parameters, monitoring frequencies, and averaging periods. All monitoring parameters for control devices not specified in the final rule must be approved by the Administrator as specified in 40 CFR 63.8(f).

If you choose to demonstrate continuous compliance by directly measuring emissions, you must install, calibrate, maintain, and operate a CEMS and record the emissions during the performance test according to the procedures specified in 40 CFR part 63, subpart A.

For all monitoring approaches (CPMS and CEMS (and COMS, if used)), you must also monitor and record the average hourly roofing line production rate or the asphalt processing rate, as applicable, during the performance test. If you are complying with the PM emission limit, you must also determine the asphalt content of the product manufactured during the performance test.

*G. What Are the Continuous Compliance Provisions?*

After the performance test, you must demonstrate continuous compliance with the emission limits by monitoring either control device or process operating parameters or by monitoring emissions. The parameters or emissions must remain within the limits established during the initial performance test.

If you choose to use parametric monitoring to demonstrate continuous compliance with the standards, the final rule specifies the parameters that are to be monitored. For combustion devices (other than boilers, process heaters, and flares that meet specified design and operating requirements), you must monitor the operating temperature. For control devices used to meet the PM standards, you must monitor the inlet gas temperature and pressure drop across the device. If you use an ESP to achieve compliance with the PM standard, you may monitor the voltage of the ESP as an alternative to pressure drop.

For parametric monitoring, you must determine and record 15-minute and 3-hour block averages of the specified parameters. However, the final rule allows the option of determining continuous compliance based on any 15-minute period (*i.e.,* you are not required to calculate 3-hour block averages). If you choose this alternative, a monitoring parameter deviation would occur if the monitoring parameter value(s) is outside the approved range during any 15-minute period.

If you use a control device other than a combustion device or PM control device to achieve compliance with the emission limits, the monitoring parameters must be approved by the Administrator and established during the initial performance test. To change the value of any monitored parameter, you must conduct a performance test and submit a request to the Administrator for approval using the procedures specified in 40 CFR 63.8(f).

*H. What Are the Notification, Recordkeeping and Reporting Requirements?*

You must comply with the notification, recordkeeping, and reporting requirements in 40 CFR part 63, subpart A, as specified in Tables 6 and 7 to the final rule. The notification, recordkeeping, and reporting requirements include, but are not limited to: Initial notification of applicability of the rule, notification of the dates for conducting the performance test and notification of compliance status; reports of any startup, shutdown, and malfunction events that occur; and semiannual reports of excess emissions or deviations from monitoring parameter limits. When no deviations occur, you must submit semiannual reports indicating that no deviations have occurred during the period. For a combustion device, a deviation would be any time (excluding periods of startup, shutdown and malfunction which would be a separate report) that the operating temperature falls below the limit established during the initial performance test. For a control device used to meet the PM standards, a deviation would be any time (excluding periods of startup, shutdown and malfunction) that the temperature of the gas at the inlet to the control device or the pressure drop across the control device (or ESP voltage) are outside their respective limits established during the initial performance test.

You must maintain records of the following, as applicable: (1) Combustion device operating temperature; (2) PM control device inlet gas temperature and pressure drop (or voltage for ESP); (3) approved parameters for sources that comply with the emission limits using a control device other than a combustion device or PM control device; (4) CEMS; and (5) the date and time a deviation commenced if a monitoring parameter or emission deviation occurs, the date and time corrective actions were initiated and completed, a description of the cause of the deviation, and a description of the corrective actions taken. You must also prepare a startup, shutdown, and malfunction plan and maintain records of actions taken during these events, as required by 40 CFR 63.6(e)(3).

The final rule also includes a requirement to develop and make available for inspection by the permitting authority, upon request, a site-specific monitoring plan that specifies how the continuous parameter monitoring system will be installed, operated, and maintained as well as the data quality assurance procedures and ongoing recordkeeping and reporting procedures.

The NESHAP General Provisions (§ 63.10(b)) require that records be maintained for at least 5 years from the date of each record. You must retain the records onsite for at least 2 years. You may retain records for the remaining 3 years at an offsite location. The records must be readily available and in a form suitable for efficient inspection and review. The files may be retained on paper, microfilm, microfiche, a computer, computer disks, or magnetic tape. Reports may also be made on paper or on a labeled computer disk using commonly available and compatible computer software.

## III. What Are the Responses to the Significant Comments?

Significant public comments on the proposed rule along with our responses to these comments are summarized in this section of the preamble. For detailed responses to all the comments, see the Background Information Document (BID) (''National Emission Standards for Hazardous Air Pollutants, Asphalt Processing and Asphalt Roofing Manufacturing, Summary of Public Comments and Responses,'' February 2003, EPA–453/R–03–005) (Docket No. OAR–2002–0035).

*A. Rule Applicability*

*Comment:* Several commenters noted that it was not clear if the proposed rule applied to facilities that process asphalt intended for non-roofing products. The commenters suggested that confusion regarding applicability was caused by addressing both the asphalt processing and asphalt roofing manufacturing source categories together under one NESHAP. Confusion may have also been caused by the proposed definition of asphalt flux, which read: ''asphalt flux means the residual material from distillation of crude oil used to manufacture asphalt roofing products.''

*Response:* On June 21, 2002, the EPA sent letters to the commenters to clarify two aspects of the proposed rule:

- The proposed rule was intended to cover all asphalt processing regardless of the asphalt's end use; and
- Requirements for storage vessels at asphalt roofing manufacturing facilities, inadvertently left out of the proposed rule, are the same as those for storage vessels at asphalt processing facilities.

Subsequent comments on the notice letters disagreed with EPA's interpretation of the proposed rule's applicability and contended that the EPA should address this clarification in a supplemental proposal.

The EPA does not believe that a supplemental proposal is needed to clarify the applicability of the final rule. It has long been held that actual notice constitutes adequate notice and opportunity for comment for purposes of section 307 of the CAA. (See *Small Lead Refiner Phase Down Task Force* v. *EPA,* 705 F. 2d 507, 548 (D.C. Cir. 1983).) The extensive comments received in response to the June 21, 2002 letters demonstrates that the commenters had adequate notice and availed themselves of it. There is no credible claim that further comments could have been submitted had there been more notice or that the time for response was inadequate. Under these circumstances, EPA believes that it afforded all letter recipients adequate notice and opportunity for comment and a supplemental notice to clarify the applicability of the rule is not necessary.

The final NESHAP includes both asphalt processing and asphalt roofing manufacturing because many facilities both process asphalt and manufacture roofing products (asphalt roofing and other roofing products).

With respect to the issue of whether asphalt processing should include operations that process asphalt for non-roofing uses, EPA believes that it should. The HAP emissions from asphalt processing (and the means of controlling such emissions) are identical, whether or not asphalt is produced for roofing or for other uses. Nor did EPA ever intend to distinguish among asphalt uses in setting out the rule's scope. The source category definition (''Documentation for Developing the Initial Source Category List,'' EPA–450/3–91–030, July 1992) of ''asphalt processing'' reads as follows:

> ''The Asphalt Processing source category includes any facility *engaged in the preparation of asphalt at asphalt processing plants,* petroleum refineries, and asphalt roofing plants. Asphalt preparation, called 'blowing,' involves the oxidation of asphalt flux by bubbling air through the liquid asphalt flux at 260°C for 1 to 4.5 hours, depending upon the desired characteristics of the asphalt. The category includes, but is not limited to, the following process: asphalt heating, blowing still, and asphalt storage tanks'' (emphasis added).

This definition is not limited to asphalt that is processed for roofing manufacturing, and in fact, is not limited in any respect by the ultimate use to which processed asphalt is put. Consistent with the source category definition, it was not EPA's intent to limit the applicability of the final rule to the processing of roofing asphalt or any other end use.

To clarify the final rule applicability, EPA has written the definition of asphalt processing in the final rule to read as follows:

> ''Asphalt processing facility means any facility engaged in the preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities. Asphalt preparation, called 'blowing,' is the oxidation of asphalt flux, achieved by bubbling air through the heated asphalt, to increase the softening point and reduce the penetration of the oxidized asphalt.
>
> An asphalt processing facility includes one or more asphalt flux blowing stills and their associated asphalt flux storage tanks, oxidized asphalt storage tanks and oxidized asphalt loading racks.''

The EPA has also modified the definition of ''asphalt flux'' as proposed to remove any suggestion that the rule's scope is limited by the intended use of the processed asphalt.

*B. Asphalt Storage Tank and Loading Rack Vapor Pressure Control Cutoff*

*Comment:* Several commenters supported using a vapor pressure cutoff, such as those found in the petroleum refinery NESHAP (40 CFR part 63, subpart CC) and the new source performance standards for storage vessels (40 CFR part 60, subparts K, Ka, and Kb) for asphalt storage tanks and loading racks. The commenters contended that equipment with vapor pressures below those thresholds would emit only minimal amounts of HAP and therefore should not be subject to control requirements. The commenters also alleged that EPA was being inconsistent among different MACT standards in developing standards applicable to similar types of equipment. For example, one commenter asserted that EPA should not declare emissions from low HAP, low vapor pressure stocks as *de minimis* sources under the petroleum refineries NESHAP and then propose to regulate those same emissions under the asphalt NESHAP. One commenter contended that it would be reasonable for EPA to use an approach similar to the petroleum refinery NESHAP because asphalt flux feedstocks and finished asphalt products are produced directly by refineries and because many refineries will be subject to the asphalt NESHAP.

*Response:* The proposed MACT for all asphalt storage tanks with a capacity of 1.93 Mg or greater at existing, new, and reconstructed affected sources was based on the fact that greater than 12 percent of the asphalt storage tanks were controlled with a combustion device operating at or above 1200 °F. Also, the available data showed that no sources were using a combustion device to control emissions from storage tanks with a capacity less than 1.93 Mg of asphalt. Therefore, the proposed MACT did not require control of tanks with capacities less than 1.93 Mg (66 FR 58620).

The EPA now believes that the prevalence of combustion devices on tanks storing asphalt at low vapor pressure is misleading. We believe that combustion devices in this industry are used to control emissions from tanks storing high- and low-vapor asphalt that are generally part of an ''integrated system,'' an integrated group of process equipment including higher-emitting equipment such as a blowing still, so that what really is being controlled by combustion are the emissions from the high-emitting equipment, with emissions from other system components being ''along for the ride.''

An integrated system is one in which process components (*e.g.,* blowing stills, coaters, and tanks storing high- and low-vapor pressure asphalt) are utilized largely together and are generally located in close proximity. In an integrated system, emissions from process equipment that are subject to less stringent emission standards (*e.g.,* tanks storing low-vapor pressure asphalt) generally are routed to the control device (*e.g.,* combustion device) that is used to control emissions from

the equipment (*e.g.,* blowing stills, coaters) that are subject to more stringent emission standards. In other words, it is more cost effective to ''over control'' emissions from lower-emitting storage tanks that are nearby, using a combustion device that is selected and designed to control emissions from the entire system (*e.g.,* blowing stills, coaters, and asphalt storage tanks), than it is to install a separate control device to reduce emissions from the storage tanks to a lesser degree.

In the absence of an integrated system configuration, we do not believe that combustion controls represent the MACT floor (or otherwise represent MACT) for tanks that store low-vapor pressure asphalt since facilities that do not use a combustion device to reduce emissions from higher-emitting process equipment are unlikely to use a combustion device to reduce emissions from tanks that store low-vapor pressure asphalt (and we in fact know of no instance when a tank storing low-vapor pressure asphalt in this industry is controlled by a combustion device when the tank is a stand-alone unit). Therefore, for tanks storing asphalt with a low vapor pressure, the MACT floor largely depends on whether or not the tank is part of an integrated system.

Based on the above discussion, it would seem logical to develop one set of standards for integrated systems (including tanks) and another for nonintegrated systems (where tanks would have different standards). However, we do not have sufficient data to characterize the control level of integrated versus nonintegrated systems or even to devise workable definitions of these systems. The significance of the existence of integrated systems, therefore, relates to calculation of floor standards for tanks.

Based on the existence of integrated systems, we do not believe that we have to include all tanks storing high- and low-vapor pressure asphalt together in making a floor determination for storage tanks. We do believe that it is reasonable to assume that facilities would use combustion devices for tanks storing high-vapor pressure asphalt because of the greater potential for emissions from these tanks and the appropriateness of controlling volatile emissions using combustion devices. We, thus, included all such tanks as a single group in determining floor standards and determined that the best-performing 12 percent of tanks used to store high-vapor pressure asphalt use combustion to control the emissions. (We did not, however, include tanks used to store low-vapor pressure asphalt in this calculus and are not compelled to for the reasons explained above relating to integrated systems.) Therefore, for tanks storing asphalt with a high vapor pressure at existing and new sources, we believe that the MACT floor is a combustion device regardless of whether or not it is located in an integrated system.

For tanks storing low-vapor pressure asphalt, a separate determination must be made to establish the MACT floor for existing and new sources. For these storage tanks, the MACT floor depends mainly on whether or not the tank is part of an integrated system. However, as noted above, we are unable to devise a workable definition of the integrated system. Among other problems, we have no information regarding tank vapor pressure or facility configurations to determine the relative proximity of low-vapor pressure asphalt storage tanks to combustion devices. Although we are unable to develop a separate standard for integrated systems, the MACT floor for any storage tank cannot be less stringent than the opacity limits for controlling PM specified in the asphalt NSPS, since over 12 percent of existing storage tanks in the industry are already subject to those standards. In fact, approximately 27 percent of the storage tanks in the database use particulate controls (such as fiber-bed filters, mist eliminators, condensers) to meet the asphalt NSPS. This control of PM will necessarily control HAP emissions since a portion of the PM is condensed HAP. Therefore, the MACT floor for tanks storing asphalt with low vapor pressures at existing and new sources is the opacity limit specified in the asphalt NSPS.

We recognize that this floor for tanks storing low-vapor pressure asphalt actually applies to some tanks that are part of integrated systems. Nevertheless, we expect that tanks that are part of an integrated system are controlled by the same control device used to control the entire system, rather than being controlled separately. Therefore, using the opacity limit specified in the asphalt NSPS as a floor for tanks storing asphalt with low vapor pressures should not discourage facilities from using combustion devices to control emissions from storage tanks that are part of integrated systems. Nor is it likely to lead to removal of any existing controls on integrated systems since the combined system was already adopted by those facilities and removal would entail retrofit costs.

With regard to establishing the vapor pressure cutoff value that would be used to assign tanks into high- and low-vapor pressure groups (Groups 1 and 2, respectively), EPA does not have survey data for the vapor pressure of stored asphalt that could be used to establish this value. In the absence of vapor pressure data, we based the vapor pressure cutoff value on the MACT floor for existing storage tanks at petroleum refineries. Asphalt tanks are similar because asphalt is a petroleum refinery product, and asphalt processing facilities are located at some petroleum refineries. Therefore, EPA believes that it is reasonable for the vapor pressure cutoff in the final rule to be consistent with the maximum true vapor pressure cutoff (10.4 kPa) for existing storage tanks in the petroleum refinery NESHAP. Thus, under the final rule, tanks storing asphalt with a maximum true vapor pressure of 10.4 kPa or greater are considered ''high-vapor pressure'' tanks (*i.e.*, Group 1 tanks) while tanks storing asphalt with a maximum true vapor pressure less than 10.4 kPa are considered ''low-vapor pressure'' tanks (*i.e.*, Group 2 tanks).

The petroleum refinery NESHAP also contains an annual average true vapor pressure cutoff (8.3 kPa) and an annual HAP liquid concentration cutoff (4 percent, by weight of total organic HAP) for determining storage tank applicability. Because the storage temperature of asphalt at asphalt processing and asphalt roofing manufacturing facilities is expected to be maintained over a narrow range throughout the year, providing an annual average for storage temperature in the asphalt NESHAP is unnecessary. The concentration cutoff was included in the petroleum refinery NESHAP to address the fact that some liquids at petroleum refineries have very low HAP concentrations and high vapor pressures due to the volatility of non-HAP compounds in the material. However, because asphalt processing and asphalt roofing manufacturing facilities do not typically store products other than asphalt, the EPA believes that including an annual HAP liquid concentration cutoff in the asphalt NESHAP is unnecessary.

With regard to the proposed tank capacity cutoff of 1.93 Mg, EPA believes that the analysis used to establish the proposed capacity cutoff for combustion control was flawed since the cutoff value was based on the smallest tank controlled by a combustion device. Since we now consider the seeming prevalence of combustion devices on tanks storing low-vapor pressure asphalt to actually reflect controls on integrated systems (driven by the need to control the greatest emission source of the integrated system), we do not believe that the proposed capacity cutoff value for combustion control is valid because

it was premised on the assumption that stand-alone (*i.e.*, non-integrated) low-vapor pressure asphalt storage tanks were controlled by means of combustion devices. Consequently, we are establishing the capacity cutoff value for combustion control to be consistent with the capacity cutoff for existing tanks at petroleum refineries (again consistent with comments urging that the petroleum and asphalt NESHAP be consistent insofar as they apply to similar types of emission sources).

Therefore, the floor for asphalt storage tanks with a capacity of 177 cubic meters or greater and storing asphalt with a maximum vapor pressure of 10.4 kPa or greater (*i.e.*, Group 1 asphalt storage tanks) at existing and new sources is combustion control. The floor for asphalt storage tanks with a capacity of 177 cubic meters or greater storing asphalt with a maximum vapor pressure less than 10.4 kPa (*i.e.*, Group 2 asphalt storage tanks) at existing and new sources is the opacity limit specified in the asphalt NSPS. As at proposal, however, we are not determining a floor level of control for tanks less than a capacity of 1.93 Mg. Based on the tank capacity data from the Asphalt Roofing Manufacturers Association survey, less than 2 percent of the tanks have capacities less than 1.93 Mg, and only one of those tanks is vented to a PM control device.

The EPA is also applying much this same reasoning in determining a MACT floor for asphalt loading racks. The proposed MACT for asphalt loading racks at existing, new, and reconstructed affected sources was based on the fact that greater than 12 percent of the loading racks were controlled with a combustion device operating at or above 1200 °F. Although we do not have vapor pressure data for loading racks, we believe (as with storage tanks) that it is reasonable to assume that facilities are using combustion devices to control emissions from loading racks that are used to transfer high-vapor pressure asphalt because of the greater potential for emissions from this asphalt and the appropriateness of controlling volatile emissions using combustion devices. Consequently, the EPA believes that the MACT floor for loading racks transferring high-vapor pressure asphalt at existing and new sources is a combustion device regardless of whether or not it is part of an integrated system. In the absence of vapor pressure data, and to be consistent with the approach used for high-vapor pressure (Group 1) asphalt storage tanks, we based the vapor pressure cutoff for loading asphalt racks on the maximum true vapor pressure cutoff (10.4 kPa) for existing storage tanks in the petroleum refinery NESHAP.

For loading racks used to transfer low-vapor pressure asphalt at existing and new sources, as with low-vapor pressure (Group 2) asphalt storage tanks, we are unable to develop a separate standard for integrated systems. However, unlike the asphalt NSPS for storage tanks, an existing regulation does not exist for asphalt loading racks that would establish a minimum level of the MACT floor. Therefore, a MACT floor for loading racks transferring asphalt with a maximum vapor pressure less than 10.4 kPa at existing and new sources could not be established.

In summary, the MACT floor for tanks with an asphalt storage capacity of 177 cubic meters or greater and storing asphalt with a maximum vapor pressure of 10.4 kPa or greater at existing and new sources is based on a combustion device operating at or above 1200 °F. For tanks with asphalt storage capacities of 177 cubic meters or greater or storing asphalt with a maximum vapor pressure less than 10.4 kPa, the MACT floor for existing and new sources is represented by the opacity limit in the asphalt NSPS. The opacity limit of the asphalt NSPS also represents the MACT floor for asphalt storage tanks with capacities less than 177 cubic meters but greater than or equal to 1.84 cubic meters at existing and new sources. For loading racks used to transfer asphalt with a maximum vapor pressure of 10.4 kPa or greater at existing and new sources, the MACT floor is a combustion device operating at or above 1200 °F. The MACT floor for loading racks used to transfer asphalt with a maximum vapor pressure less than 10.4 kPa at existing and new sources is no additional control.

Also, as explained in detail in the preamble to the proposal (66 FR 58620–21), we continue to believe that controls beyond the MACT floor for high-vapor pressure asphalt storage tanks and loading racks (where the floors have not changed between the proposed and final rule) are not technically or economically feasible (*i.e.*, there are no known controls that would reduce HAP emissions more than combustion control), so that MACT for the high-vapor pressure asphalt storage tanks and loading racks is represented by their respective MACT floors.

For the low-vapor pressure asphalt storage tanks (for which we have made a different floor determination), the only control option beyond the MACT floor is control with a combustion device. However, given the relatively low HAP emissions from this equipment, the incremental cost-effectiveness (greater than $3,000,000 per megagram of HAP reduced) of increasing the level of HAP reduction achieved by a PM control device (93.3 percent) (the device we anticipate would be used to achieve the opacity standard which is the MACT floor) to that achieved by a combustion device (95 percent) is not a justifiable option. (Additional energy use likewise would be required to achieve this modest incremental HAP reduction as well.) Therefore, MACT for low-vapor pressure asphalt storage tanks is represented by the MACT floor.

For low-vapor pressure asphalt loading racks, the control options beyond the MACT floor are a PM control device and a combustion device. However, as with low-vapor pressure asphalt storage tanks, the high costs per megagram of HAP reduction (greater than $500,000 per megagram of HAP reduced) achieved by controlling low-vapor pressure asphalt loading rack emissions with either a PM control device or combustion device make the beyond the MACT floor options economically infeasible. Therefore, MACT for low-vapor pressure asphalt loading racks is represented by the MACT floor.

Because we are specifying vapor pressure as a cutoff for different groups of tanks, it is necessary to identify how such a determination would be made if a facility were required to do so. Following proposal, the EPA met with industry representatives to identify an appropriate test method for determining the vapor pressure of stored asphalt, if EPA were to promulgate such a cutoff. According to the industry and EPA representatives, a standardized or consensus test method for measuring the vapor pressure of stored asphalt has not been established. (See the summary of the September 17, 2002 meeting with petroleum refinery representatives in Docket No. OAR–2002–0035.) Currently, the industry uses nomographs or other relationships depicting the vapor pressure of petroleum liquids as a function of storage temperature vapor pressure and asphalt composition (*e.g.*, flux versus oxidized) to determine the vapor pressure of stored asphalt.

Since there is no standardized test method for measuring the vapor pressure of stored asphalt, the EPA believes that the final rule should specify a temperature that equates to a vapor pressure of 10 kPa, instead of requiring facilities to physically measure asphalt vapor pressure. According to industry representatives, asphalt flux reaches 10.4 kPa at approximately 500 to 550 °F (oxidized asphalt would require higher

temperatures to reach 10.4 kPa). The temperature estimate cited by the industry representatives was confirmed on a theoretical level using a regression equation for asphalt vapor pressure as a function of temperature, developed by the Owens Corning Company using a modified version of the American Society of Testing and Materials (ASTM) method D2879 (Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope). According to the regression equation, asphalt flux reaches a vapor pressure of 10.4 kPa at approximately 450 °F.

Since the regression equation, which under-predicts the temperature at which asphalt flux reaches a given vapor pressure (according to industry and EPA representatives), tends to corroborate the storage temperature cited by the industry representatives, the EPA believes that a storage temperature of 500 °F appropriately represents a vapor pressure of 10.4 kPa. Consequently, the final rule specifies that tanks storing (and loading racks transferring) asphalt at a maximum vapor pressure of 10.4 kPa or greater, or at a maximum temperature of 500 °F or greater, must be controlled with a combustion device. Also, the final rule allows the use of standard industry nomographs and other relationships to determine the vapor pressure of asphalt. The docket for this NESHAP (Docket No. OAR–2002–0035) contains a memorandum from the National Petrochemical and Refiners Association (NPRA) that presents several manual methods that are currently used in the petroleum industry for estimating the vapor pressure of asphalt.

*C. Level of the Standards*

*Comment:* One commenter questioned the derivation of the THC destruction and combustion efficiency standards (95 and 99.6 percent, respectively). The commenter contended that the statistical analysis used to derive the standards from test data was incorrect.

*Response:* The EPA agrees with the commenter that the available data set is too small for a rigorous statistical analysis. Therefore, at proposal, we chose to account for the variability in the data by subtracting one standard deviation from the mean, rather than performing a more formal statistical analysis to derive the proposed emission limit. Despite the small size of the data set, since proposal, the EPA has calculated the 95 percent confidence interval about the mean of the test data for THC destruction efficiency. The lower limit of the 95-confidence interval is 94.85 percent THC destruction efficiency. (See section 2.3.10.2 of the BID for a more detailed discussion of this analysis.) In other words, there is only a 5 percent chance that the true population mean of THC destruction efficiency will be below 94.85 percent. In addition, all four of the facilities with THC destruction efficiency data would meet the standards. This calculation supports that a THC destruction efficiency of 95 percent is achievable. The 95 percent destruction efficiency has thus been included in the final rule.

Since proposal, the EPA has calculated the 95 percent confidence interval about the mean of the test data used to establish the proposed combustion efficiency. The lower limit of the 95 percent confidence interval is 99.49 percent combustion efficiency. Since this value is lower than the proposed combustion efficiency limit of 99.6 percent, the EPA has decided to establish the combustion efficiency limit in the final rule at 99.5 percent. (Note that this change does not affect EPA's determination, made originally at proposal, that beyond-the-floor controls remain inappropriate here, largely because EPA knows of no means of control more efficient than combustion control.)

*Comments*: Comments were also received on the proposed rule regarding the use of electric regenerative thermal oxidizers (RTO). One commenter explained that EPA's proposed method for calculating combustion efficiency penalizes control technologies that do not burn auxiliary fuel and, consequently, have a relatively low $CO_2$ concentration at their outlets. The commenters stated that the proposed method for calculating combustion efficiency understates the combustion efficiency achieved by an RTO since the only relevant source of $CO_2$ in RTO exhaust comes from the destruction of hydrocarbons. The commenters submitted test data and proposed a separate equation for calculating the destruction efficiency for RTO.

*Response:* The EPA reviewed the test data submitted by the commenters (see section of the 2.3.10.6 of the BID) and agrees that, because RTO do not use auxiliary fuel, the outlet $CO_2$ concentrations are much less than those of conventional thermal oxidizers without compromising THC destruction efficiency. Consequently, the final rule contains an option that allows combustion devices that do not use auxiliary fuel to use an outlet-only THC destruction efficiency equation. To determine the level of the standard for RTO, the same approach as was taken for the derivation of the THC destruction efficiency and combustion efficiency standards was used (*i.e.*, one standard deviation was subtracted from the average THC destruction efficiencies calculated from the test data submitted by the commenters). The resulting calculations (see section 2.3.10.6 of the BID) yield a THC destruction efficiency standard for RTO of 95.8 percent.

*D. Compliance Options*

*Comment:* One commenter noted that the control devices used at refineries to control blowing stills are flares, boilers, and process heaters and that refineries do not typically have thermal oxidizers. The commenter urged the EPA to allow the use of combustion devices other than thermal oxidizers to control blowing still emissions.

*Response:* The proposed rule did not prohibit the use of process heaters, boilers, and flares because we consider these units to be types of thermal oxidizers. However, since the term ''thermal oxidizer'' was not defined in the proposed rule, the proposed rule could be interpreted differently. In the final rule, we use the term ''combustion device'' instead of ''thermal oxidizer'' and have defined combustion device to include process heaters, boilers, flares, and incinerators; all devices which achieve the same high degree of HAP destruction provided they operate using efficient combustion. Consistent with other rules, a performance test and continuous parameter monitoring are not required for boilers or process heaters if the vent streams to be controlled are introduced into the flame zone, or if the unit has a design input heat capacity of 44 MW or greater since the residence time and operating temperature of these devices is great enough to ensure reduction of HAP emissions. Flares are required to meet the design and operating requirements of 40 CFR 63.11 in lieu of conducting performance tests, as explained earlier in this preamble.

*E. Performance Tests*

*Comment:* One commenter expressed concern with the requirement to conduct performance testing before the compliance date. The commenter stated that the NESHAP General Provisions and nearly all previously-issued MACT standards allow the test to be conducted within 180 days of the compliance date (existing sources) or at startup (new sources). The commenter pointed out that the testing date for existing sources is 8 months earlier than what is provided in the General Provisions and listed several problems that it would create.

*Response:* The EPA agrees that it is not necessary to require performance tests to be completed 60 days prior to the rule compliance date since this would effectively require that facilities be in compliance before the compliance date specified in the final rule. Consequently, the final rule (§ 63.8686(a)) has been written to be consistent with the NESHAP General Provisions (performance tests must be conducted within 180 days after the compliance date).

*F. Monitoring Requirements*

*Comment:* Comments were received on a variety of monitoring requirements. The changes made to the proposed monitoring requirements are discussed in the following paragraphs.

*Response:* Many facilities in the asphalt processing and asphalt roofing manufacturing industry use analog chart recorders to display and record monitored parameters. However, when these devices are used, the value of the monitored parameters is generally not recorded electronically. Parameter values therefore cannot be automatically averaged and compared to the established range to determine if there has been an parameter deviation. Such a determination would have to be made through manual calculations. One commenter suggested that chart recorders could more easily be used for monitoring if manual calculations of 3-hour averages were not required and deviations were based on 15-minute exceedances of limits. Because the commenter's suggestion is more stringent than the requirements in the proposed rule, the EPA has decided that this is an acceptable alternative for determining continuous compliance. Therefore, the final rule was written to allow facilities the option of demonstrating continuous compliance using either a 15-minute or 3-hour averaging period.

For example, if a facility uses an analog chart recorder that provides a continuous record of the combustion device operating temperature on a strip chart, the facility would be allowed to determine compliance with the NESHAP by comparing the minimum temperature reading for each 15-minute period to the minimum 15-minute value established during the initial performance test (*i.e.*, the facility would not be required to manually average the readings on the strip chart over a 3-hour period to determine compliance with the standards).

*Comment:* One commenter asserted that facilities should be allowed to use CEMS and COMS to demonstrate continuous compliance with the standards.

*Response:* The proposed rule did not preclude facilities from using CEMS and COMS, and it was not EPA's intent to discourage facilities from using CEMS and COMS where feasible and beneficial to them. However, continuous monitoring is not required for the opacity standard, even though the opacity standard applies at all times (*i.e.*, EPA test method 9 could be used at any time by the regulating agency to determine compliance with the opacity standard). To allow you to use continuous monitors without first obtaining the approval from the Administrator to use an alternative monitoring procedure, the list of acceptable monitoring systems in the final rule has been written to include CEMS (and COMS) and their applicable performance specifications from 40 CFR part 60 Appendix B.

*Comment:* One commenter suggested that the EPA modify the proposed rule so that a facility using an ESP as a PM control device could select which parameters are appropriate for demonstrating compliance and have those parameters approved by the EPA in the same manner as ''other'' control devices.

*Response:* The EPA agrees with the commenter that ESP operate differently from filter-type PM control devices, and that parameters other than pressure drop could be used to show proper ESP operation. For these reasons, an alternative has been provided in the final rule to allow facilities using an ESP to monitor the voltage going to the ESP instead of the pressure drop across the device. The voltage going to the ESP is a direct measure of the strength of the corona field responsible for ionizing PM as it passes through the ESP. The value or range of ESP voltage must be determined during the performance test.

*G. Overlap With Other Rules*

*Comment:* One commenter stated that the rule should be clarified so that asphalt flux and oxidized asphalt storage tanks already regulated under another MACT rule (for example, the petroleum refinery NESHAP) are not further regulated under the asphalt NESHAP.

*Response:* The EPA recognizes that asphalt storage vessels subject to the asphalt NESHAP could also be subject to other regulations, such as the petroleum refinery NESHAP (40 CFR part 63, subpart CC) and the storage vessel NSPS (40 CFR part 60, subpart K, Ka, or Kb). Consequently, EPA is providing in the final rule that the NESHAP does not apply to any equipment that is subject to the petroleum refinery NESHAP or to subpart K, Ka, or Kb of part 60 since the requirements specified in those rules for the types of storage tanks used in this industry (fixed roof tanks) are as stringent as the standards in the asphalt processing and asphalt roofing manufacturing NESHAP.

The EPA also recognizes that storage tanks (and blowing stills, saturators, wet loopers, and coaters) at asphalt processing and asphalt roofing manufacturing facilities could be subject to both the asphalt NESHAP and the asphalt NSPS. In cases where the rule requirements overlap, the asphalt rule specifies that facilities are required to comply only with the asphalt NESHAP. However, any storage tank with a capacity less than 1.93 mg that is subject to the asphalt NSPS but not regulated under the asphalt NESHAP must comply with the asphalt NSPS.

## IV. Summary of Environmental, Energy and Economic Impacts

Although MACT floors must be based exclusively on the emission limitation achieved by the requisite percentage of best-performing similar sources (or, for new sources, the best-performing source), the EPA has compiled information on air quality impacts, costs, non-air quality impacts, and energy impacts in compliance with Executive Orders. We estimate the final rule will affect a total of 19 existing facilities (ten asphalt processing and asphalt roofing facilities and nine petroleum refineries). We estimated the number of major sources by estimating potential emissions using emission factors and available production data. We identified major facilities only for the purposes of estimating potential emissions, emission reductions, control costs, and monitoring, recordkeeping, and reporting costs. It should be noted that facilities may not necessarily be major sources for the purposes of determining applicability of the final rule because they were identified as major by our estimates. Likewise, facilities would not be relieved from complying with the final rule because they were not identified as major sources in our estimates.

*A. What Are the Air Quality Impacts?*

Baseline HAP emissions from the asphalt processing and asphalt roofing manufacturing facilities that are projected to be subject to the final rule are estimated to be 295 Mg/yr (325 tpy). Baseline THC emissions are estimated to be 550 Mg/yr (605 tpy). The baseline emission estimates were developed using equipment, control device, and

production rate data reported in a 1995 industry survey. The final rule is projected to reduce HAP emissions by 86 Mg/yr (95 tpy) and THC emissions by 465 Mg/yr (512 tpy). The final rule will also reduce PM emissions from asphalt processing and asphalt roofing manufacturing facilities. However, we do not have sufficient data to estimate baseline emissions or emission reductions for PM. The baseline emissions and emission reductions do not include contributions from area sources because they are not subject to the final rule.

The final rule will also likely cause an increase in emissions of nitrogen oxides ($NO_X$), CO, sulfur dioxide ($SO_2$), PM, and volatile organic compounds (VOC) due to the increased use of thermal oxidizers as control devices. The estimated increases of $NO_X$, CO, and $SO_2$ are approximately, 476, 799, and 6 Mg/yr (524, 880, and 6 tpy), respectively. These estimates are based on the amount of exhaust and auxiliary fuel that will be burned at the asphalt processing and asphalt roofing manufacturing facilities that are estimated to be major sources.

*B. What Are the Cost Impacts?*

The total capital cost for the industry to achieve compliance with the final rule for existing facilities is estimated to be $2.71 million. The capital costs arise from the purchase of emission capture systems and control devices. The total annualized cost is estimated to be $1.41 million. The total annualized costs for the industry include the annualized capital cost of emission capture systems and control devices and operation, maintenance, supervisory labor, maintenance materials, utilities, administrative charges, taxes, and insurance. It is estimated that the industry will spend an additional industrywide average of $320,000 per year for monitoring, recordkeeping, and reporting to comply with the final rule. This results in a total annualized cost of $1.73 million.

*C. What Are the Economic Impacts?*

The Agency conducted an economic impact analysis to determine the market- and industry-level impacts associated with the final rule. The compliance costs of the final rule are expected to increase the prices of asphalt processing and roofing products by 0.02 percent or less across the directly affected product markets, and domestic production and consumption of the affected products are expected to decrease by less than 0.01 percent also.

In terms of industry impacts, the asphalt processors and asphalt roofing manufacturers are projected to experience a decrease in operating profits of about 0.08 percent, which reflects the compliance costs associated with the production of asphalt processing and roofing products and the resulting reductions in revenues due to the increase in the prices of the directly affected product markets and reduced quantities purchased. Through the market impacts described above, the final rule created both gainers and losers within the asphalt processing and asphalt roofing manufacturing industry. The majority of facilities, almost 92 percent, are expected to experience profit increases with the final rule; however, there are some facilities projected to lose profits (about 8 percent of affected facilities). Furthermore, the economic impact analysis indicates that of the 123 existing asphalt roofing and processing facilities, none are at risk of closure because of the final rule. Therefore, none of the companies that own asphalt processing and roofing manufacturing facilities are projected to close due to the final rule.

Based on the market analysis, the annual social costs of the final rule are projected to be about $1.73 million. The estimated social costs differ slightly from the projected engineering costs of the final rule. These two costs differ because social costs account for producer and consumer behavior. These social costs are distributed across the many consumers and producers of asphalt processing and roofing products. For the final rule, the producers of asphalt roofing and processing products, in aggregate, are expected to incur about $1.32 million annually in costs, while the consumers of asphalt roofing and processing products are expected to incur approximately $410 thousand annually across the product markets.

The economic analysis also addressed potential changes in new asphalt processing and roofing facility construction for the year following promulgation of the final rule. This was done by estimating the total annualized costs for new facilities and projecting changes in equilibrium output due to the final rule. The economic impact analysis estimated a very small reduction in the growth of the asphalt industry represented by a small reduction in equilibrium output of asphalt products in the year following promulgation. However, the reduction in equilibrium output was only a small fraction of estimated new plant capacity. Thus, the control costs are not expected to influence the decision to enter the market for asphalt products. For more information, consult the Economic Impact Analysis report supporting the final rule in the docket.

*D. What Are the Non-air Health, Environmental and Energy Impacts?*

Spent filter media from certain types of PM control devices (*e.g.*, high-efficiency air filters (HEAF)) are periodically replaced and disposed of as solid waste. Although many of the emission sources subject to the final rule are already controlled by PM devices, an increase in the generation of spent filter media is expected as a result of the final rule. However, we do not have sufficient data to quantify this anticipated increase in solid waste generation.

No water impacts are anticipated due to the final rule. None of the control devices expected to be used to comply with the final rule require the use of water nor do they generate wastewater streams.

Increased energy usage is expected due to the final rule. Electricity is required to power fans for emission capture systems, and new thermal oxidizers will require supplemental fuel (*e.g.*, natural gas) to efficiently combust the HAP vent streams. The estimated annual increase in electricity consumption is 5.58 million kilowatt hours. The approximate increase in natural gas consumption is 186 million standard cubic feet per year. These estimates are for the 19 facilities considered to be major sources.

## V. Statutory and Executive Order Reviews

*A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant,'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the final rule is not a ''significant regulatory action'' because it is not expected to have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

*B. Paperwork Reduction Act*

The information collection requirements of the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 2029.01) and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division, (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, by e-mail at *auby.susan@epa.gov* or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*.

The information will be used by the EPA to ensure that the requirements of the asphalt processing and asphalt roofing manufacturing NESHAP are implemented properly and are complied with on a continuous basis. Records and reports are necessary to identify asphalt processing and asphalt roofing manufacturing facilities that might not be in compliance with the final rule. Based on reported information, the implementing agency will decide which asphalt processing and asphalt roofing manufacturing facilities should be inspected and what records or processes should be inspected. Records that owners and operators of asphalt processing and asphalt roofing manufacturing facilities maintain indicate whether personnel are operating and maintaining control equipment properly.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

We estimate the final rule will affect a total of 19 existing facilities (ten asphalt processing and asphalt roofing facilities and nine petroleum refineries). We estimated the number of major sources by estimating emissions using emission factors and available production data and extrapolating potential emission from actual emissions. We identified major facilities for the purposes of estimating emissions, emission reductions, control costs, and monitoring, recordkeeping, and reporting costs only. Facilities would not necessarily be major sources for the purposes of determining applicability of the asphalt NESHAP because they were identified as major by our estimates. Likewise, facilities are not relieved from complying with the asphalt NESHAP because they were not identified as major sources in our estimates. We expect that existing facilities will be in compliance 3 years after promulgation of the final rule, but will perform related activities (*e.g.*, reading and understanding the rule, conducting performance tests) before they are in compliance. We project that one new asphalt processing and asphalt roofing facility will become subject to the final rule during each of the first 3 years.

The estimated average annual burden for industry for the first 3 years after implementation of the rule is approximately 1,962 person-hours annually. There will be no capital costs for monitoring or recordkeeping during the first 3 years. The total average annual reporting and recordkeeping burden (including industry and the EPA) for this collection is estimated at approximately 2,780 labor hours per year at an average annual cost of approximately $356,000.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

*C. Regulatory Flexibility Act (RFA)*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small organizations, and small government jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards by NAICS code (in this case, less than 750 employees for affected businesses classified in NAICS code 324122, Asphalt Shingles and Coating Materials Manufacturing and less than 1,500 employees for businesses in NAICS code 324110, Petroleum Refineries); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

In accordance with the RFA, the EPA conducted an assessment of the standards on small businesses within the asphalt roofing and processing industry. Based on SBA NAICS-based size definitions and reported employment data, the EPA identified 26 of the 40 companies that own potentially affected asphalt roofing and processing facilities and petroleum refineries as small businesses. Although small businesses represent 65 percent of the companies within the source category, they are expected to incur approximately 5 percent of the total industry compliance costs of about $1.73 million annually. There are no companies with compliance costs greater than 0.04 percent of their sales. No firms are expected to close rather than incur the costs of compliance with the rule.

After considering the economic impacts of today's rule on small entities, the EPA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for

Federal agencies to assess the effects of their regulatory actions on State, local, or tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. In the Economic Impact Assessment (EIA) for the final rule, the EPA estimates that the total nationwide capital cost for the standards is $2.71 million. The total nationwide annual cost for the standards is $1.73 million. In addition, the EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is not subject to the requirements of sections 202 or 205 of the UMRA.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities under the final rule are owned or operated by State or local governments. Thus Executive Order 13132 does not apply to the final rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to the final rule.

*G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health and safety risks.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' The final rule is not a ''significant regulatory action'' because it is not likely to have a significant adverse effect

on the supply, distribution, or use of energy.

We have estimated that the rule will result in an additional 5.58 million kilowatt hours of electricity usage and 186 million standard cubic feet of natural gas consumption. This represents an insignificant fraction of the over 3 trillion kilowatt hours and 21,000 trillion cubic feet of natural gas consumed in the United States (Energy Information Administration, Department of Energy, *www.eia.gov*).

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113, section 12(d), (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rulemaking involves technical standards including EPA test methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5A, 9, 10, 22, and 25A. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA test methods. No applicable voluntary consensus standards were identified for EPA test methods 1A, 2A, 2D, 2F, 2G, 5A, 9, and 22.

The search for emissions measurement procedures identified 16 voluntary consensus standards potentially applicable to the final rule. Three of the voluntary consensus standards were not available at the time this review was conducted. For the remaining 13 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the final rule, we determined that they were impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, the EPA does not intend to adopt these standards. The search and review methods can be found in docket A–95–32 (see **ADDRESSES** section of this preamble).

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule will be effective on April 29, 2003.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

**Christine Todd Whitman,**

*Administrator.*

■ For the reasons cited in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

## PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

**Authority** : 42 U.S.C. 7401 *et seq.*

■ 2. Part 63 is amended by adding a new subpart LLLLL to read as follows:

## Subpart LLLLL—National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing

Sec.



## Subpart LLLLL—National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing

### What This Subpart Covers

#### § 63.8680 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for existing and new asphalt processing and asphalt roofing manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

**§ 63.8681 Am I subject to this subpart?**

(a) You are subject to this subpart if you own or operate an asphalt processing facility or an asphalt roofing manufacturing facility, as defined in § 63.8698, that is a major source of hazardous air pollutants (HAP) emissions, or is located at, or is part of a major source of HAP emissions.

(b) After the applicable compliance date specified in § 63.8683, blowing stills, asphalt storage tanks, saturators, wet loopers, and coaters subject to the provisions of this subpart that are also subject to 40 CFR part 60, subpart UU, are required to comply only with provisions of this subpart.

(c) This subpart does not apply to any equipment that is subject to subpart CC of this part or to subpart K, Ka, or Kb of 40 CFR part 60.

(d) This subpart does not apply to asphalt processing and asphalt roofing manufacturing equipment used for research and development, as defined in § 63.8698.

(e) A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

**§ 63.8682 What parts of my plant does this subpart cover?**

(a) This subpart applies to each new, reconstructed, or existing affected source at asphalt processing and asphalt roofing manufacturing facilities.

(b) The affected source is:

(1) Each asphalt processing facility as defined in § 63.8698; or

(2) Each asphalt roofing manufacturing line as defined in § 63.8698.

(i) If the asphalt roofing manufacturing line is collocated with an asphalt processing facility, the storage tanks that store asphalt flux intended for oxidation in the blowing stills and those tanks that receive asphalt directly from the on-site blowing stills are part of the asphalt processing facility. The remaining asphalt storage tanks are considered to be part of the asphalt roofing facility.

(ii) If an asphalt storage tank is shared by two or more lines at an asphalt roofing manufacturing facility, the shared storage tank is considered part of the line to which the tank supplies the greatest amount of asphalt, on an annual basis.

(iii) If a sealant or adhesive applicator is shared by two or more asphalt roofing manufacturing lines, the shared applicator is considered part of the line that provides the greatest throughput to the applicator, on an annual basis.

(c) An affected source is a new affected source if you commenced construction of the affected source after November 21, 2001, and you met the applicability criteria at the time you commenced construction.

(d) An affected source is reconstructed if you meet the criteria in the reconstruction definition in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

**§ 63.8683 When must I comply with this subpart?**

(a) If you have a new or reconstructed affected source and start up:

(1) On or before April 29, 2003, then you must comply with the requirements for new and reconstructed sources in this subpart no later than April 29, 2003.

(2) After April 29, 2003, then you must comply with the requirements for new and reconstructed sources in this subpart upon startup.

(b) If you have an existing affected source, you must comply with the requirements for existing sources no later than May 1, 2006.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a (or part of a) major source of HAP, then the following requirements apply:

(1) Any portion of the existing facility that becomes a new or reconstructed affected source must be in compliance with this subpart upon startup or by April 29, 2003, whichever is later.

(2) All other parts of the source to which this subpart applies must be in compliance with this subpart by 3 years after the date the source becomes a major source.

(d) You must meet the notification requirements in § 63.8692 according to the schedules in §§ 63.8692 and 63.9. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

**Emission Limitations**

**§ 63.8684 What emission limitations must I meet?**

(a) You must meet each emission limitation in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

**General Compliance Requirements**

**§ 63.8685 What are my general requirements for complying with this subpart?**

(a) You must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) You must develop and implement a written site-specific monitoring plan according to the provisions in § 63.8688(g) and (h).

**Testing and Initial Compliance Requirements**

**§ 63.8686 By what date must I conduct performance tests or other initial compliance demonstrations?**

(a) For existing affected sources, you must conduct performance tests no later than 180 days after the compliance date that is specified for your source in § 63.8683 and according to the provisions in § 63.7(a)(2).

(b) As an alternative to the requirement specified in paragraph (a) of this section, you may use the results of a previously-conducted emission test to demonstrate compliance with the emission limitations in this subpart if you demonstrate to the Administrator's satisfaction that:

(1) No changes have been made to the process since the time of the emission test; and

(2) The operating conditions and test methods used during testing conform to the requirements of this subpart; and

(3) The control device and process parameter values established during the previously-conducted emission test are used to demonstrate continuous compliance with this subpart.

(c) For new sources, you must demonstrate initial compliance no later than 180 calendar days after April 29, 2003 or within 180 calendar days after startup of the source, whichever is later.

**§ 63.8687 What performance tests, design evaluations, and other procedures must I use?**

(a) You must conduct each performance test in Table 3 to this subpart that applies to you.

(b) Each performance test must be conducted under normal operating conditions and under the conditions specified in Table 3 to this subpart.

(c) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(d) Except for opacity and visible emission observations, you must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(e) You must use the following equations to determine compliance with the emission limitations.

(1) To determine compliance with the particulate matter mass emission rate, you must use Equations 1 and 2 of this section as follows:

$$E = M_{PM}/P \qquad \text{(Eq. 1)}$$

Where:

E = Particulate matter emission rate, kilograms (pounds) of particulate matter per megagram (ton) of roofing product manufactured.

$M_{PM}$ = Particulate matter mass emission rate, kilograms (pounds) per hour, determined using Equation 2.

P = The asphalt roofing product manufacturing rate during the emissions sampling period, including any material trimmed from the final product, megagram (tons) per hour.

$$M_{PM} = C * Q * K \qquad \text{(Eq. 2)}$$

Where:

$M_{PM}$ = Particulate matter mass emission rate, kilograms (pounds) per hour.

C = Concentration of particulate matter on a dry basis, grams per dry standard cubic meter (g/dscm), as measured by the test method specified in Table 3 to this subpart.

Q = Vent gas stream flow rate (dry standard cubic meters per minute) at a temperature of 20°C as measured by the test method specified in Table 3 to this subpart.

K = Unit conversion constant (0.06 minute-kilogram/hour-gram.

(2) To determine compliance with the total hydrocarbon percent reduction standard, you must use Equations 3 and 4 of this section as follows:

$$RE = \left[\left(M_{THCi} - M_{THCo}\right)/\left(M_{THCi}\right)\right] * (100) \qquad \text{(Eq. 3)}$$

Where:

RE = Emission reduction efficiency, percent.

$M_{THCi}$ = Mass flow rate of total hydrocarbons entering the control device, kilograms (pounds) per hour, determined using Equation 4.

$M_{THCo}$ = Mass flow rate of total hydrocarbons exiting the control device, kilograms (pounds) per hour, determined using Equation 4.

$$M_{THC} = C * Q * K \qquad \text{(Eq. 4)}$$

Where:

$M_{THC}$ = Total hydrocarbon emission rate, kilograms (pounds) per hour.

C = Concentration of total hydrocarbons on a dry basis, parts per million by volume (ppmv), as measured by the test method specified in Table 3 to this subpart.

Q = Vent gas stream flow rate (dscmm) at a temperature of 20 °C as measured by the test method specified in Table 3 to this subpart.

K = Unit conversion constant (3.00E–05) $(ppmv)^{-1}$ (gram-mole/standard cubic meter) (kilogram/gram) (minutes/hour)), where standard temperature for gram-mole/standard cubic meter is 20 °C.

(3) To determine compliance with the combustion efficiency standard, you must use Equation 5 of this section as follows:

$$CE = \left[1 - \left(CO/CO_2\right) - \left(THC/CO_2\right)\right] \qquad \text{(Eq. 5)}$$

Where:

CE = Combustion efficiency, percent.

CO = Carbon monoxide concentration at the combustion device outlet, parts per million by volume (dry), as measured by the test method specified in Table 3 to this subpart.

$CO_2$ = Carbon dioxide concentration at the combustion device outlet, parts per million by volume (dry), as measured by the test method specified in Table 3 to this subpart.

THC = Total hydrocarbon concentration at the combustion device outlet, parts per million by volume (dry), as measured by the test method specified in Table 3 to this subpart.

(4) To determine compliance with the total hydrocarbon destruction efficiency standard for a combustion device that does not use auxiliary fuel, you must use Equation 6 of this section as follows:

$$THC\ DE = \left[\left(CO + CO_2\right)/\left(CO + CO_2 + THC\right)\right] \qquad \text{(Eq. 6)}$$

Where:

THC DE = THC destruction efficiency, percent.

CO = Carbon monoxide concentration at the combustion device outlet, parts per million by volume (dry), as measured by the test method specified in Table 3 to this subpart.

$CO_2$ = Carbon dioxide concentration at the combustion device outlet, parts per million by volume (dry), as measured by the test method specified in Table 3 to this subpart.

THC = Total hydrocarbon concentration at the combustion device outlet, parts per million by volume (dry), as measured by the test method specified in Table 3 to this subpart.

### § 63.8688 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each continuous parameter monitoring system (CPMS) according to the following:

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(2) To determine the 3-hour average, you must:

(i) Have a minimum of four successive cycles of operation to have a valid hour of data.

(ii) Have valid data from at least three of four equally spaced data values for that hour from a CPMS that is not out-of-control according to your site-specific monitoring plan.

(iii) Determine the 3-hour average of all recorded readings for each operating day, except as stated in § 63.8690(c). You must have at least two of the three hourly averages for that period using only hourly average values that are based on valid data (*i.e.,* not from out-of-control periods).

(3) You must record the results of each inspection, calibration, and validation check.

(b) For each temperature monitoring device, you must meet the requirements in paragraph (a) of this section and the following:

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) For a noncryogenic temperature range, use a temperature sensor with a minimum measurement sensitivity of 2.8 °C or 1.0 percent of the temperature value, whichever is larger.

(3) If a chart recorder is used, it must have a sensitivity in the minor division of at least 20 °F.

(4) Perform an accuracy check at least semiannually or following an operating parameter deviation:

(i) According to the procedures in the manufacturer's documentation; or

(ii) By comparing the sensor output to redundant sensor output; or

(iii) By comparing the sensor output to the output from a calibrated temperature measurement device; or

(iv) By comparing the sensor output to the output from a temperature simulator.

(5) Conduct accuracy checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(6) At least quarterly or following an operating parameter deviation, perform visual inspections of components if redundant sensors are not used.

(c) For each pressure measurement device, you must meet the requirements of paragraph (a) of this section and the following:

(1) Locate the pressure sensor(s) in, or as close as possible, to a position that provides a representative measurement of the pressure.

(2) Use a gauge with a minimum measurement sensitivity of 0.12 kiloPascals or a transducer with a minimum measurement sensitivity of 5 percent of the pressure range.

(3) Check pressure tap pluggage daily. Perform an accuracy check at least quarterly or following an operating parameter deviation:

(i) According to the procedures in the manufacturer's documentation; or

(ii) By comparing the sensor output to redundant sensor output.

(4) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(5) At least monthly or following an operating parameter deviation, perform a leak check of all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(6) At least quarterly or following an operating parameter deviation, perform visible inspections on all components if redundant sensors are not used.

(d) For monitoring parameters other than temperature and pressure drop, you must install and operate a CPMS to provide representative measurements of the monitored parameters.

(e) For each flare, you must install a device (including but not limited to a thermocouple, an ultraviolet beam sensor, or an infrared sensor) capable of continuously detecting the presence of a pilot flame.

(f) As an option to installing the CPMS specified in paragraph (a) of this section, you may install a continuous emissions monitoring system (CEMS) or a continuous opacity monitoring system (COMS) that meets the requirements specified in § 63.8 and the applicable performance specifications of 40 CFR part 60, appendix B.

(g) For each monitoring system required in this section, you must develop and make available for inspection by the permitting authority, upon request, a site-specific monitoring plan that addresses the following:

(1) Installation of the CPMS, CEMS, or COMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

(h) In your site-specific monitoring plan, you must also address the following:

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (c)(3), (c)(4)(ii), (c)(7), and (c)(8);

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(3) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(i) You must conduct a performance evaluation of each CPMS, CEMS, or COMS in accordance with your site-specific monitoring plan.

(j) You must operate and maintain the CPMS, CEMS, or COMS in continuous operation according to the site-specific monitoring plan.

#### § 63.8689 How do I demonstrate initial compliance with the emission limitations?

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 4 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8687 and Table 3 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8692(e).

### Continuous Compliance Requirements

#### § 63.8690 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, and malfunction when the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

#### § 63.8691 How do I demonstrate continuous compliance with the operating limits?

(a) You must demonstrate continuous compliance with each operating limit in Table 2 to this subpart that applies to you according to test methods specified in Table 5 to this subpart.

(b) You must report each instance in which you did not meet each operating limit in Table 5 to this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.8693.

(c) During periods of startup, shutdown, and malfunction, you must operate in accordance with the SSMP.

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

**Notifications, Reports, and Records**

**§ 63.8692 What notifications must I submit and when?**

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(f), and 63.9(b) through (f) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before April 29, 2003, you must submit an Initial Notification not later than 120 calendar days after April 29, 2003.

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after April 29, 2003, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, design evaluation, opacity observation, visible emission observation, or other initial compliance demonstration as specified in Table 3 or 4 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). You must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(f) If you are using data from a previously-conducted emission test to serve as documentation of conformance with the emission standards and operating limits of this subpart, you must submit the test data in lieu of the initial performance test results with the Notification of Compliance Status required under paragraph (e) of this section.

**§ 63.8693 What reports must I submit and when?**

(a) You must submit each report in Table 6 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 6 to this subpart and according to the following dates:

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8683 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.8683.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.8683.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the following information:

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations (emission limit, operating limit, opacity limit, and visible emission limit) that apply to you, a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which the CPMS, CEMS, or COMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS, CEMS, or COMS was out-of-control during the reporting period.

(d) For each deviation from an emission limitation (emission limit, operating limit, opacity limit, and visible emission limit), you must include the information in paragraphs (c)(1) through (6) of this section, and the information in paragraphs (d)(1) through (12) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CPMS, CEMS, or COMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time and duration that each CPMS, CEMS, or COMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CPMS, CEMS, or COMS downtime during the reporting period and the total duration of CPMS, CEMS, or COMS downtime as a percent of the total source operating time during that reporting period.

(8) An identification of each air pollutant that was monitored at the affected source.

(9) A brief description of the process units.

(10) A brief description of the CPMS, CEMS, or COMS.

(11) The date of the latest CPMS, CEMS, or COMS certification or audit.

(12) A description of any changes in CPMS, CEMS, or COMS, processes, or controls since the last reporting period.

(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 6 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(f) If acceptable to both the Administrator and you, you may submit reports and notifications electronically.

### § 63.8694 What records must I keep?

(a) You must keep the following records:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations, and opacity and visible emission observations as required in § 63.10(b)(2)(viii).

(b) You must keep the records in § 63.6(h)(6) for visible emission observations.

(c) You must keep the records required in Table 5 to this subpart to show continuous compliance with each operating limit that applies to you.

(d) Records of any shared equipment determinations as specified in § 63.8682(b).

### § 63.8695 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

## Other Requirements and Information

### § 63.8696 What parts of the General Provisions apply to me?

Table 7 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

### § 63.8697 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the following authorities are retained by the Administrator of U.S. EPA:

(1) Approval of alternatives to the requirements in §§ 63.8681, 63.8682, 63.8683, 63.8684(a) through (c), 63.8686, 63.8687, 63.8688, 63.8689, 63.8690, and 63.8691.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

### § 63.8698 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

*Adhesive applicator* means the equipment used to apply adhesive to roofing shingles for producing laminated or dimensional roofing shingles.

*Asphalt flux* means the organic residual material from distillation of crude oil that is generally used in asphalt roofing manufacturing and paving and non-paving asphalt products.

*Asphalt loading rack* means the equipment at an asphalt processing facility used to transfer oxidized asphalt from a storage tank into a tank truck, rail car, or barge.

*Asphalt processing facility* means any facility engaged in the preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities. Asphalt preparation, called ''blowing,'' is the oxidation of asphalt flux, achieved by bubbling air through the heated asphalt, to raise the softening point and to reduce penetration of the oxidized asphalt. An asphalt processing facility includes one or more asphalt flux blowing stills, asphalt flux storage tanks storing asphalt flux intended for processing in the blowing stills, oxidized asphalt storage tanks, and oxidized asphalt loading racks.

*Asphalt roofing manufacturing facility* means a facility consisting of one or more asphalt roofing manufacturing lines.

*Asphalt roofing manufacturing line* means the collection of equipment used to manufacture asphalt roofing products through a series of sequential process steps. The equipment that comprises an asphalt roofing manufacturing line varies depending on the type of substrate used (*i.e.*, organic or inorganic) and the final product manufactured (*e.g.*, roll roofing, laminated shingles). For example, an asphalt roofing manufacturing line that uses fiberglass mat as a substrate typically would not include a saturator/wet looper (or the saturator/wet looper could be bypassed if the line manufacturers multiple types of products). An asphalt roofing manufacturing line can include a saturator (including wet looper), coater, coating mixers, sealant applicators, adhesive applicators, and asphalt storage and process tanks. The number of asphalt roofing manufacturing lines at a particular facility is determined by the number of saturators (or coaters) operated in parallel. For example, an asphalt roofing manufacturing facility with two saturators (or coaters) operating in parallel would be considered to have two separate roofing manufacturing lines.

*Asphalt storage tank* means any tank used to store asphalt flux, oxidized asphalt, and modified asphalt, at asphalt roofing manufacturing facilities, petroleum refineries, and asphalt processing facilities. Storage tanks containing cutback asphalts (asphalts diluted with solvents to reduce viscosity for low temperature applications) and emulsified asphalts (asphalts dispersed in water with an emulsifying agent) are not subject to this subpart.

*Blowing still* means the equipment in which air is blown through asphalt flux to change the softening point and penetration rate of the asphalt flux, creating oxidized asphalt.

*Boiler* means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator.

*Coater* means the equipment used to apply amended (filled or modified) asphalt to the top and bottom of the substrate (typically fiberglass mat) used to manufacture shingles and rolled roofing products.

*Coating mixer* means the equipment used to mix coating asphalt and a mineral stabilizer, prior to applying the stabilized coating asphalt to the substrate.

*Combustion device* means an individual unit of equipment such as a flare, incinerator, process heater, or boiler used for the combustion of organic hazardous air pollutant vapors.

*Deviation* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit), or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart, and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

*Emission limitation* means any emission limit, opacity limit, operating limit, or visible emission limit.

*Group 1 asphalt loading rack* means an asphalt loading rack loading asphalt with a maximum temperature of 260 °C (500 °F) or greater or with a maximum true vapor pressure of 10.4 kiloPascals (kPa) (1.5 pounds per square inch absolute (psia)) or greater.

*Group 2 asphalt loading rack* means an asphalt loading rack loading asphalt with a maximum temperature less than 260 °C (500 °F) or with a maximum true vapor pressure less than 10.4 kPa, 1.5 psia.

*Group 1 asphalt storage tank* means an asphalt storage tank that meets both of the following two criteria:

(1) Has a capacity of 177 cubic meters (47,000 gallons) of asphalt or greater; and

(2) Stores asphalt at a maximum temperature of 260 °C (500 °F) or greater, or has a maximum true vapor pressure of 10.4 kPa, (1.5, psia) or greater.

*Group 2 asphalt storage tank* means any asphalt storage tank with a capacity of 1.93 megagrams (Mg) of asphalt or greater that is not a Group 1 asphalt storage tank.

*Incinerator* means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section present is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas.

*Maximum true vapor pressure* means the equilibrium partial pressure exerted by the stored asphalt at its maximum storage temperature.

*Modified asphalt* means asphalt that has been mixed with polymer modifiers.

*Oxidized asphalt* means asphalt that has been prepared by passing air through liquid asphalt flux in a blowing still.

*Process heater* means an enclosed combustion device that primarily transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water.

*Research and development equipment* means any equipment whose primary purpose is to conduct research and development to develop new processes and products, where such equipment is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a *de minimis* manner.

*Responsible official* means responsible official as defined in 40 CFR 70.2.

*Saturator* means the equipment in which substrate (predominantly organic felt) is filled with asphalt. Saturators are predominantly used for the manufacture of saturated felt products. The term saturator includes the saturator and wet looper.

*Sealant applicator* means the equipment used to apply a sealant strip to a roofing product. The sealant strip is used to seal overlapping pieces of roofing product after they have been applied.

*Work practice standard* means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

**Tables to Subpart LLLLL of Part 63**

TABLE 1 TO SUBPART LLLLL OF PART 63.—EMISSION LIMITATIONS

| For— | You must meet the following emission limitation— |
|---|---|
| 1. Each blowing still, Group 1 asphalt loading rack, and Group 1 asphalt storage tank at existing, new, and reconstructed asphalt processing facilities; and each Group 1 asphalt storage tank at existing, new, and reconstructed roofing manufacturing lines; and each coating mixer, saturator (including wet looper), coater, sealant applicator, adhesive applicator, and Group 1 asphalt storage tank at new and reconstructed asphalt roofing manufacturing lines. | a. Reduce total hydrocarbon mass emissions by 95 percent, or to a concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen;<br>b. Route the emissions to a combustion device achieving a combustion efficiency of 99.5 percent;<br>c. Route the emissions to a combustion device that does not use auxiliary fuel achieving a total hydrocarbon (THC) destruction efficiency of 95.8 percent;<br>d. Route the emissions to a boiler or process heater with a design heat input capacity of 44 megawatts (MW) or greater;<br>e. Introduce the emissions into the flame zone of a boiler or process heater; or<br>f. Route emissions to a flare meeting the requirements of § 63.11(b). |

TABLE 1 TO SUBPART LLLLL OF PART 63.—EMISSION LIMITATIONS—Continued

| For— | You must meet the following emission limitation— |
|---|---|
| 2. The total emissions from the coating mixer, saturator (including wet looper), coater, sealant applicator, and adhesive applicator at each existing asphalt roofing manufacturing line.[a] | a. Limit particulate matter emissions to 0.04 kilograms emissions per megagram (kg/Mg) (0.08 pounds per ton, lb/ton) of asphalt shingle or mineral-surfaced roll roofing produced; or<br>b. Limit particulate matter emissions to 0.4 kg/Mg (0.8 lb/ton) of saturated felt or smooth-surfaced roll roofing produced. |
| 3. Each saturator (including wet looper) and coater at existing, new, and reconstructed asphalt roofing manufacturing lines.[a] | a. Limit exhaust gases to 20 percent opacity; and<br>b. Limit visible emissions from the emission capture system to 20 percent of any period of consecutive valid observations totaling 60 minutes. |
| 4. Each Group 2 asphalt storage tank at existing, new, and reconstructed asphalt processing facility and asphalt roofing manufacturing lines.[a] | Limit exhaust gases to 0 percent opacity.[b] |

[a] As an alternative to meeting the particulate matter and opacity limits, these emission sources may comply with the THC percent reduction or combustion efficiency standards.

[b] The opacity limit can be exceeded for on consecutive 15-minute period in any 24-hour period when the storage tank transfer lines are being cleared. During this 15-minute period, the control device must not be bypassed. If the emissions from the asphalt storage tank are ducted to the saturator control device, the combined emissions from the saturator and storage tank must meet the 20 percent opacity limit (specified in 4.a of table 1) during this 15-minute period. At any other time, the opacity limit applies to Group 2 asphalt storage tanks.

TABLE 2 TO SUBPART LLLLL OF PART 63.—OPERATING LIMITS

| For— | You must[a] |
|---|---|
| 1. Non-flare combustion devices with a design heat input capacity less than 44 MW or where the emissions are not introduced into the flame zone. | Maintain the 3-hour average[b] combustion zone temperature at or above the operating limit established during the performance test. |
| 2. Flares | Meet the operating requirements specified in § 63.11(b). |
| 3. Control devices used to comply with the particulate matter standards. | a. Maintain the 3-hour average[b] inlet gas temperature at or below the operating limit established during the performance test; and<br>b. Maintain the 3-hour average[b] pressure drop across the device[c] at or below the operating limit established during the performance test. |
| 4. Control devices other than combustion devices or devices used to comply with the particulate matter emission standards. | Maintain the approved monitoring parameters within the operating limits established during the performance test. |

[a] The operating limits specified in Table 2 are applicable if you are monitoring control device operating parameters to demonstrate continuous compliance. If you are using a CEMS or COMS, you must maintain emissions below the value established during the initial performance test.

[b] A 15-minute averaging period can be used as an alternative to the 3-hour averaging period for this parameter.

[c] As an alternative to monitoring the pressure drop across the control device, owners or operators using an ESP to achieve compliance with the emission limits specified in Table 1 of this subpart can monitor the voltage to the ESP. If this option is selected, the ESP voltage must be maintained at or above the operating limit established during the performance test.

TABLE 3 TO SUBPART LLLLL OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS[a] [b]

| For— | You must— | Using— | According to the following requirements— |
|---|---|---|---|
| 1. All particulate matter, total hydrocarbon, carbon monoxide, and carbon dioxide emission tests. | a. Select sampling port's location and the number of traverse points. | i. EPA test method 1 or 1A in appendix A to part 60 of this chapter. | A. For demonstrating compliance with the total hydrocarbon percent reduction standard, the sampling sites must be located at the inlet and outlet of the control device and prior to any releases to the atmosphere.<br>B. For demonstrating compliance with the particulate matter mass emission rate, THC destruction efficiency, THC outlet concentration, or combustion efficiency standards, the sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere. |
| 2. All particulate matter and total hydrocarbon tests. | Determine velocity and volumetric flow rate. | EPA test method 2, 2A, 2C, 2D, 2F, or 2G, as appropriate, in appendix A to part 60 of this chapter. | |
| 3. All particulate matter and total hydrocarbon tests. | Determine the gas molecular weight used for flow rate determination. | EPA test method 3, 3A, 3B, as appropriate, in appendix A to part 60 of this chapter. | |
| 4. All particulate matter, total hydrocarbon, carbon monoxide, and carbon dioxide emission tests. | Measure moisture content of the stack gas. | EPA test method 4 in appendix A to part 60 of this chapter. | |

TABLE 3 TO SUBPART LLLLL OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS [a] [b]—Continued

| For— | You must— | Using— | According to the following requirements— |
|---|---|---|---|
| 5. All particulate matter emission tests. | Measure the asphalt processing rate or the asphalt roofing manufacturing rate and the asphalt content of the product manufactured, as appropriate. | | |
| 6. Each control device used to comply with the particulate matter emission standards. | Measure the concentration of particulate matter. | EPA test method 5A in appendix A to part 60 of this chapter. | For demonstrating compliance with the particulate matter standard, the performance tests must be conducted under normal operating conditions and while manufacturing the roofing product that is expected to result in the greatest amount of hazardous air pollutant emissions. |
| 7. All opacity tests ..... | Conduct opacity observations .. | EPA test method 9 in appendix A to part 60 of this chapter. | Conduct opacity observations for at least 3 hours and obtain 30, 6-minute averages. |
| 8. All visible emission tests ..... | Conduct visible emission observations. | EPA test method 22 in appendix A to part 60 of this chapter. | Modify EPA test method 22 such that readings are recorded every 15 seconds for a period of consecutive observations totaling 60 minutes. |
| 9. Each combustion device used to comply with the combustion efficiency or THC standards. | a. Measure the concentration of carbon dioxide. | EPA test method 3A in appendix A to part 60 of this chapter. | |
| | b. Measure the concentration of carbon monoxide. | EPA test method 10 in appendix A to part 60 of this chapter. | |
| | c. Measure the concentration of total hydrocarbons. | EPA test method 25A in appendix A to part 60 of this chapter. | |
| 10. Each control device used to comply with the THC reduction efficiency or outlet concentration standards. | Measure the concentration of total hydrocarbons. | EPA test method 25A in appendix A to part 60 of this chapter. | |
| 11. Each combustion device ..... | Establish a site-specific combustion zone temperature limit. | Data from the CPMS and the applicable performance test method(s). | You must collect combustion zone temperature data every 15 minutes during the entire period of the initial 3-hour performance test, and determine the average combustion zone temperature over the 3-hour performance test by computing the average of all of the 15-minute readings. |
| 12. Each control device used to comply with the particulate matter emission standards. | Establish a site-specific inlet gas temperature limit; and establish a site-specific limit for the pressure drop across the device. | Data from the CPMS and the applicable performance test method(s). | You must collect the inlet gas temperature and pressure drop [b] data every 15 minutes during the entire period of the initial 3-hour performance test, and determine the average inlet gas temperature and pressure drop [c] over the 3-hour performance test by computing the average of all of the 15-minute readings. |
| 13. Each control device other than a combustion device or device used to comply with the particulate matter emission standards. | Establish site-specific monitoring parameters. | Process data and data from the CPMS and the applicable performance test method(s). | You must collect monitoring parameter data every 15 minutes during the entire period of the initial 3-hour performance test, and determine the average monitoring parameter values over the 3-hour performance test by computing the average of all of the 15-minute readings. |
| 14. Each flare used to comply with the THC percent reduction or PM emission limits. | Assure that the flare is operated and maintained in conformance with its design. | The requirements of § 63.11(b). | |

[a] As specified in § 63.8687(e), you may request that data from a previously-conducted emission test serve as documentation of conformance with the emission standards and operating limits of this subpart.

[b] Performance tests are not required if: (1) The emissions are routed to a boiler or process heater with a design heat input capacity of 44 MW or greater; or (2) the emissions are introduced into the flame zone of a boiler or process heater.

[c] As an alternative to monitoring the pressure drop across the control device, owners or operators using an ESP to achieve compliance with the emission limits specified in Table 1 of this subpart can monitor the voltage to the ESP.

TABLE 4 TO SUBPART LLLLL TO PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

| For— | For the following emission limitation— | You have demonstrated initial compliance if— |
|---|---|---|
| 1. Each blowing still, Group 1 asphalt loading rack, and Group 1 asphalt storage tank, at existing, new, and reconstructed asphalt processing facilities. | a. Reduce total hydrocarbon mass emissions by 95 percent or to a concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen. | i. The total hydrocarbon emissions, determined using the equations in § 63.8687 and the test methods and procedures in Table 3 to this subpart, over the period of the performance test are reduced by at least 95 percent by weight or to a concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen; and<br>ii. You have a record of the average control device operating parameters [a] over the performance test during which emissions were reduced according to 1.a.i. of this table. |
| | b. Route the emissions to a combustion device achieving a combustion efficiency of 99.5 percent. | i. The combustion efficiency of the combustion device, determined using the equations in § 63.8687 and the test methods and procedures in Table 3 to this subpart, over the period of the performance test is at least 99.5 percent; and<br>ii. You have a record of the average combustion zone temperature [a] and carbon monoxide, carbon dioxide, and total hydrocarbon outlet concentrations over the performance test during which the combustion efficiency was at least 99.5 percent. |
| | c. Route the emissions to a combustion device that does not use auxiliary fuel achieving a THC destruction efficiency of 95.8 percent. | i. The THC destruction efficiency of the combustion device, determined using the equations in § 63.8687 and the test methods and procedures in Table 3 to this subpart, over the period of the performance test is at least 95.8 percent; and<br>ii. You have a record of the average combustion zone temperature [a] and carbon monoxide, carbon dioxide, and total hydrocarbon outlet concentrations over the performance test during which the THC destruction efficiency was at least 95.8 percent. |
| | d. Route emissions to a boiler or process heater with a design heat input capacity of 44 MW or greater. | You have a record of the boiler or process heater design heat capacity. |
| | e. Introduce the emissions into the flame zone of a boiler or process heater. | You have a record that shows the emissions are being introduced into the boiler or process heater flame zone. |
| | f. Route emissions to a flare meeting the requirements of § 63.11(b). | You have a record of the flare design and operating requirements. |
| 2. Each coating mixer, saturator (including wet looper), coater, sealant applicator, adhesive applicator, and Group 1 asphalt storage tank at new and reconstructed asphalt roofing manufacturing lines. | a. Reduce total hydrocarbon mass emissions by 95 percent or to a concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen. | See 1.a.i. and ii. of this table. |
| | b. Route the emissions to a combustion device achieving a combustion efficiency of 99.5 percent. | See 1.b.i. and ii. of this table. |
| | c. Route the emissions to a combustion device that does not use auxiliary fuel achieving a THC destruction efficiency of 95.8 percent. | See 1.c.i. and ii. of this table. |
| | d. Route emissions to a boiler or process heater with a design heat input capacity of 44 MW or greater. | See 1.d. of this table. |
| | e. Introduce the emissions into the flame zone of a boiler or process heater. | See 1.e. of this table. |
| | f. Route emissions to a flare meeting the requirements of § 63.11(b). | See 1.f. of this table. |
| 3. The total emissions from the coating mixer, saturator (including wet looper), coater, sealant applicator, and adhesive applicator at each existing asphalt roofing manufacturing line. | a. Limit PM emissions to 0.04 kg/Mg (0.08 lb/ton) of asphalt shingle or mineral-surfaced roll roofing produced. | i. The PM emissions, determined using the equations in § 63.8687 and the test methods and procedures in Table 3 to this subpart, over the period of the performance test are no greater than the applicable emission limitation; and<br>ii. You have a record of the average control device [a] or process parameters over the performance test during which the particulate matter emissions were no greater than the applicable emission limitation. |

TABLE 4 TO SUBPART LLLLL TO PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS—Continued

| For— | For the following emission limitation— | You have demonstrated initial compliance if— |
|---|---|---|
| | b. Limit PM emissions to 0.4 kg/Mg (0.8 lb/ton) of saturated felt or smooth-surfaced roll roofing produced. | See 3.a.i. and ii. of this table. |
| 4. Each saturator (including wet looper) and coater at an existing, new, or reconstructed asphalt roofing manufacturing line. | a. Limit visible emissions from the emissions capture system to 20 percent of any period of consecutive valid observations totaling 60 minutes. | The visible emissions, measured using EPA test method 22, for any period of consecutive valid observations totaling 60 minutes during the initial compliance period described in § 63.8686(b) do not exceed 20 percent. |
| | b. Limit opacity emissions to 20 percent. | The opacity, measured using EPA test method 9, for each of the first 30 6-minute averages during the initial compliance period described in § 63.8686(b) does not exceed 20 percent. |
| 5. Each Group 2 asphalt storage tank at existing, new, and reconstructed asphalt processing facilities and asphalt roofing manufacturing lines. | Limit exhaust gases to 0 percent opacity. | The opacity, measured using EPA test method 9, for each of the first 30 6-minute averages during the initial compliance period described in § 63.8686(b) does not exceed 0 percent. |

[a] If you use a CEMS or COMS to demonstrate compliance with the emission limits, you are not required to record control device operating parameters.

TABLE 5 TO SUBPART LLLLL OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS [a]

| For— | For the following operating limit— | You must demonstrate continuous compliance by— |
|---|---|---|
| 1. Each non-flare combustion device.[b] | a. Maintain the 3-hour[c] average combustion zone temperature at or above the operating limit establishing during the performance test. | i. Passing the emissions through the control device; and<br>ii. Collecting the combustion zone temperature data according to § 63.8688(b); and<br>iii. Reducing combustion zone temperature data to 3-hour[c] averages according to calculations in Table 3 to this subpart; and<br>iv. Maintaining the 3-hour[c] average combustion zone temperature within the level established during the performance test. |
| 2. Each flare | Meet the operating requirements specified in § 63.11(b). | The flare pilot light must be present at all times and the flare must be operating at all times that emissions may be vented to it. |
| 3. Control devices used to comply with the particulate matter emission standards. | a. Maintain the 3-hour[c] average inlet gas temperature and pressure drop across device[d] at or below the operating limits established during the performance test. | i. Passing the emissions through the control device; and<br>ii. Collecting the inlet gas temperature and pressure drop[d] data according to § 63.8688 (b) and (c); and<br>iii. Reducing inlet gas temperature and pressure drop[d] data to 3-hour[c] averages according to calculations in Table 3 to this subpart; and<br>iv. Maintaining the 3-hour[c] average inlet gas temperature and pressure drop[d] within the level established during the performance test. |
| 4. Control devices other than combustion devices or devices used to comply with the particulate matter emission. | a. Maintain the monitoring parameters within the operating limits established during the performance test. | i. Passing the emissions through the devices;<br>ii. Collecting the monitoring parameter data according to § 63.8688(d); and<br>iii. Reducing the monitoring parameter data to 3-hour[c] averages according to calculations in Table 3 to this subpart; and<br>iv. Maintaining the monitoring parameters within the level established during the performance test. |

[a] The operating limits specified in Table 2 and the requirements specified in Table 5 are applicable if you are monitoring control device operating parameters to demonstrate continuous compliance. If you use a CEMS or COMS to demonstrate compliance with the emission limits, you are not required to record control device operating parameters. However, you must maintain emissions below the value established during the initial performance test. Data from the CEMS and COMS must be reduced as specified in § 63.9(g).

[b] Continuous parameter monitoring is not required if (1) the emissions are routed to a boiler or process heater with a with a design heat input capacity of 44 MW or greater; or (2) the emissions are introduced into the flame zone of a boiler or process heater.

[c] A 15-minute averaging period can be used as an alternative to the 3-hour averaging period for this parameter.

[d] As an alternative to monitoring the pressure drop across the control device, owners or operators using an ESP to achieve compliance with the emission limits specified in Table 1 of this subpart can monitor the voltage to the ESP. If this option is selected, the ESP voltage must be maintained at or above the operating limit established during the performance test.

TABLE 6 TO SUBPART LLLLL OF PART 63—REQUIREMENTS FOR REPORTS

| You must submit— | The report must contain— | You must submit the report— |
|---|---|---|
| 1. An initial notification | The information in § 63.9(b) | According to the requirements in § 63.9(b). |
| 2. A notification of performance test | A written notification of the intent to conduct a performance test. | At least 60 calendar days before the performance test is scheduled to begin, as required in § 63.9(e). |
| 3. A notification of opacity and visible emission observations. | A written notification of the intent to conduct opacity and visible emission observations. | According to the requirements in § 63.9(f). |

TABLE 6 TO SUBPART LLLLL OF PART 63—REQUIREMENTS FOR REPORTS—Continued

| You must submit— | The report must contain— | You must submit the report— |
|---|---|---|
| 4. Notification of compliance status ..... | The information in § 63.9(h)(2) through (5), as applicable ... | According to the requirements in § 63.9(h)(2) through (5), as applicable. |
| 5. A compliance report ..... | a. A statement that there were no deviations from the emission limitations during the reporting period, if there are no deviations from any emmission limitations (emission limit, operating limit, opacity limit, and visible emission limit) that apply to you. | Semiannually according to the requirements in § 63.8693(b). |
| | b. If there were no periods during which the CPMS, CEMS, or COMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS, CEMS, or COMS was out-of-control during the reporting period. | Semiannually according to the requirements in § 63.8693(b). |
| | c. If you have a deviation from any emission limitation (emission limit, operating limit, opacity limit, and visible emission limit), the report must contain the information in § 63.8693(c). If there were periods during which the CPMS, CEMS, or COMS was out-of-control, as specified in § 63.8(c)(7), the report must contain the information in § 63.8693(d). | Semiannually according to the requirements in § 63.8693(b). |
| | d. If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i). | Semiannually according to the requirements in § 63.8693(b). |
| 6. An immediate startup, shutdown, and malfunction report if you have a startup, shutdown, or malfunction during the reporting period and actions taken were not consistent with your startup, shutdown, and malfunction plan. | The information in § 63.10(d)(5)(ii) ..... | By fax or telephone within 2 working days after starting actions inconsistent with the plan followed by a letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority. |

TABLE 7 TO SUBPART LLLLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL

| Citation | Subject | Brief description | Applies to subpart LLLLL |
|---|---|---|---|
| § 63.1 ..... | Applicability ..... | Initial Applicability Determination; Applicability After Standard Established; Permit Requirements; Extensions, Notifications. | Yes. |
| § 63.2 ..... | Definitions ..... | Definitions for part 63 standards ..... | Yes. |
| § 63.3 ..... | Units and Abbreviations ..... | Units and abbreviations for part 63 standards ... | Yes. |
| § 63.4 ..... | Prohibited Activities ..... | Prohibited Activities; Compliance date; Circumvention, Severability. | Yes. |
| § 63.5 ..... | Construction/Reconstruction ..... | Applicability; applications; approvals ..... | Yes. |
| § 63.6(a) ..... | Applicability ..... | GP apply unless compliance extension GP apply to area sources that become major. | Yes. |
| § 63.6(b)(1)–(4) ... | Compliance Dates for New and Reconstructed sources. | Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f). | Yes. |
| § 63.6(b)(5) ..... | Notification ..... | Must notify if commenced construction or reconstruction after proposal. | Yes. |
| § 63.6(b)(6) ..... | [Reserved]. | | |
| § 63.6(b)(7) ..... | Compliance Dates for New and Reconstructed Area Sources That Become Major. | Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source. | Yes. |
| § 63.6(c)(1)–(2) ... | Compliance Dates for Existing Sources ..... | 1. Comply according to date in subpart, which must be no later than 3 years after effective date.<br>2. For section 112(f) standards, comply within 90 days of effective date unless compliance extension has been granted. | Yes. |
| § 63.6(c)(3)–(4) ... | [Reserved]. | | |
| § 63.6(c)(5) ..... | Compliance Dates for Existing Area Sources That Become Major. | Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years). | Yes. |

TABLE 7 TO SUBPART LLLLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL—Continued

| Citation | Subject | Brief description | Applies to subpart LLLLL |
|---|---|---|---|
| § 63.6(d) | [Reserved]. | | |
| § 63.6(e)(1) | Operation & Maintenance | 1. Operate to minimize emissions at all times ...<br>2. Correct malfunctions as soon as practicable<br>3. Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met. | Yes. |
| § 63.6(e)(2) | [Reserved]. | | |
| § 63.6(e)(3) | Startup, Shutdown, and Malfunction (SSM) Plan (SSMP). | 1. Requirement for SSM and startup, shutdown, malfunction plan.<br>2. Content of SSMP | Yes. |
| § 63.6(f)(1) | Compliance Except During SSM | You must comply with emission standards at all times except during SSM. | Yes. |
| § 63.6(f)(2)–(3) | Methods for Determining Compliance | Compliance based on performance test, operation and maintenance plans, records, inspection. | Yes. |
| § 63.6(g)(1)–(3) | Alternative Nonopacity Standard | Procedures for getting an alternative nonopacity standard. | Yes. |
| § 63.6(h) | Opacity/Visible Emission (VE) Standards | Requirements for opacity and VE limits | Yes. |
| § 63.6(h)(1) | Compliance with Opacity/VE Standards | You must comply with opacity/VE emission limitations at all times except during SSM. | Yes. |
| § 63.6(h)(2)(i) | Determining Compliance with Opacity/VE Standards. | If standard does not state test method, use EPA test method 9, 40 CFR 60, appendix A for opacity and EPA test method 22, 40 CFR 60, appendix A for VE. | No. The test methods for opacity and visible emissions are specified in § 63.8687. |
| § 63.6(h)(2)(ii) | [Reserved]. | | |
| § 63.6(h)(2)(iii) | Using Previous Tests to Demonstrate Compliance with Opacity/VE Standards. | Criteria for when previous opacity/VE testing can be used to show compliance with this rule. | Yes. |
| § 63.6(h)(3) | [Reserved]. | | |
| § 63.6(h)(4) | Notification of Opacity/VE Observation Date | Must notify Administrator of anticipated date of observation. | Yes. |
| § 63.6(h)(5)(i), (iii)–(v). | Conducting Opacity/VE Observations | Dates and Schedule for conducting opacity/VE observations. | Yes. |
| § 63.6(h)(5)(ii) | Opacity Test Duration and Averaging Times | Must have at least 3 hours of observation with thirty 6-minute averages. | Yes. |
| § 63.6(h)(6) | Records of Conditions During Opacity/VE Observations. | Must keep records available and allow Administrator to inspect. | Yes. |
| § 63.6(h)(7)(i) | Report COMS Monitoring Data from Performance Test. | Must submit COMS data with other performance test data. | Yes, if COMS used. |
| § 63.6(h)(7)(ii) | Using COMS instead of EPA test method 9, 40 CFR 60, appendix A. | Can submit COMS data instead of EPA test method 9, 40 CFR 60, appendix A results even if rule requires EPA test method 9, 40 CFR 60, appendix A, but must notify Administrator before performance test. | Yes, if COMS used. |
| § 63.6(h)(7)(iii) | Averaging time for COMS during performance test. | To determine compliance, must reduce COMS data to 6-minute averages. | Yes, if COMS used. |
| § 63.6(h)(7)(iv) | COMS requirements | Owner/operator must demonstrate that COMS performance evaluations are conducted according to § 63.8(e), COMS are properly maintained and operated according to § 63.8(c) and data quality as § 63.8(d). | Yes, if COMS used. |
| § 63.6(h)(7)(v) | Determining Compliance with Opacity/VE Standards. | COMS is probative but not conclusive evidence of compliance with opacity standard, even if EPA test method 9, 40 CFR 60, appendix A observation shows otherwise. Requirements for COMS to be probative evidence, proper maintenance, meeting PS 1, and data have not been altered. | Yes, if COMS used. |
| § 63.6(h)(8) | Determining Compliance with Opacity/VE Standards. | Administrator will use all COMS, EPA test method 9, 40 CFR 60, appendix A, and EPA test method 22, 40 CFR 60, appendix A results, as well as information about operation and maintenance to determine compliance. | Yes. |
| § 63.6(h)(9) | Adjusted Opacity Standard | Procedures for Administrator to adjust an opacity standard. | Yes. |
| § 63.6(i) | Compliance Extension | Procedures and criteria for Administrator to grant compliance extension. | Yes. |
| § 63.6(j) | Presidential Compliance Exemption | President may exempt source category from requirement to comply with rule. | Yes. |

TABLE 7 TO SUBPART LLLLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL—Continued

| Citation | Subject | Brief description | Applies to subpart LLLLL |
|---|---|---|---|
| § 63.7(a)(1)–(2) ... | Performance Test Dates ..... | Dates for conducting initial performance testing and other compliance demonstrations. Must conduct 180 days after first subject to rule. | Yes. |
| § 63.7(a)(3) ..... | Section 114 Authority ..... | Administrator may require a performance test under CAA section 114 at any time. | Yes. |
| § 63.7(b)(1) ..... | Notification of Performance Test ..... | Must notify Administrator 60 days before the test. | Yes. |
| § 63.7(b)(2) ..... | Notification of Rescheduling ..... | If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date. | Yes. |
| § 63.7(c) ..... | Quality Assurance/Test Plan ..... | 1. Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with:<br>2. Test plan approval procedures .....<br>3. Performance audit requirements .....<br>4. Internal and external QA procedures for testing. | Yes. |
| § 63.7(d) ..... | Testing Facilities ..... | Requirements for testing facilities | Yes. |
| § 63.7(e)(1) ..... | Conditions for Conducting Performance Tests .. | 1. Performance tests must be conducted under representative conditions. Cannot conduct performance tests during SSM.<br>2. Not a violation to exceed standard during SSM. | Yes. |
| § 63.7(e)(2) ..... | Conditions for Conducting Performance Tests .. | Must conduct according to rule and EPA test methods unless Administrator approves alternative. | Yes. |
| § 63.7(e)(3) ..... | Test Run Duration ..... | 1. Must have three test runs of at least 1 hour each.<br>2. Compliance is based on arithmetic mean of three runs.<br>3. Conditions when data from an additional test run can be used. | Yes. |
| § 63.7(f) ..... | Alternative Test Method ..... | Procedures by which Administrator can grant approval to use an alternative test method. | Yes. |
| § 63.7(g) ..... | Performance Test Data Analysis ..... | 1. Must include raw data in performance test report.<br>2. Must submit performance test data 60 days after end of test with the Notification of Compliance Status.<br>3. Keep data for 5 years ..... | Yes. |
| § 63.7(h) ..... | Waiver of Tests ..... | Procedures for Administrator to waive performance test. | Yes. |
| § 63.8(a)(1) ..... | Applicability of Monitoring Requirements ..... | Subject to all monitoring requirements in standard. | Yes. |
| § 63.8(a)(2) ..... | Performance Specifications ..... | Performance Specifications in appendix B of part 60 apply. | Yes, if CEMS used. |
| § 63.8(a)(3) ..... | [Reserved] | | |
| § 63.8(a)(4) ..... | Monitoring with Flares ..... | Unless your rule says otherwise, the requirements for flares in § 63.11 apply. | Yes. |
| § 63.8(b)(1) ..... | Monitoring ..... | Must conduct monitoring according to standard unless Administrator approves alternative. | Yes. |
| § 63.8(b) (2)–(3) .. | Multiple Effluents and Multiple Monitoring Systems. | 1. Specific requirements for installing monitoring systems.<br>2. Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise.<br>3. If more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup. | Yes. |
| § 63.8(c)(1) ..... | Monitoring System Operation and Maintenance | Maintain monitoring system in a manner consistent with good air pollution control practices. | Yes. |
| § 63.8(c)(1)(i) ..... | Routine and Predictable CMS malfunction ..... | 1. Follow the SSM plan for routine repairs .....<br>2. Keep parts for routine repairs readily available.<br>3. Reporting requirements for CMS malfunction when action is described in SSM plan. | Yes. |
| § 63.8(c)(1)(ii) ..... | CMS malfunction not in SSP plan ..... | Reporting requirements for CMS malfunction when action is not described in SSM plan. | Yes. |

TABLE 7 TO SUBPART LLLLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL—Continued

| Citation | Subject | Brief description | Applies to subpart LLLLL |
|---|---|---|---|
| § 63.8(c)(1)(iii) ..... | Compliance with Operation and Maintenance Requirements. | 1. How Administrator determines if source complying with operation and maintenance requirements.<br>2. Review of source O&M procedures, records, manufacturer's instructions, recommendations, and inspection of monitoring system. | Yes. |
| § 63.8(c)(2)–(3) ... | Monitoring System Installation ..... | 1. Must install to get representative emission and parameter measurements.<br>2. Must verify operational status before or at performance test. | Yes. |
| § 63.8(c)(4) ..... | CMS Requirements ..... | CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts. | No; § 63.8690 specifies the CMS requirements. |
| § 63.8(c)(4)(i)–(ii) | CMS Requirements ..... | 1. COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period.<br>2. CEMS must have a minimum of one cycle of operation for each successive 15-minute period. | Yes, if COMS used. |
| § 63.8(c)(5) ..... | COMS Minimum Procedures ..... | COMS minimum procedures | Yes. |
| § 63.8(c)(6) ..... | CMS Requirements ..... | Zero and High level calibration check requirements. | No; § 63.8688 specifies the CMS requirements. |
| § 63.8(c)(7)–(8) ... | CMS Requirements ..... | Out-of-control periods, including reporting ..... | Yes. |
| § 63.8(d) ..... | CMS Quality Control ..... | 1. Requirements for CMS quality control, including calibration, etc.<br>2. Must keep quality control plan on record for the life of the affected source.<br>3. Keep old versions for 5 years after revisions | No; § 63.8688 specifies the CMS requirements. |
| § 63.8(e) ..... | CMS Performance Evaluation ..... | Notification, performance evaluation test plan, reports. | No; § 63.8688 specifies the CMS requirements. |
| § 63.8(f)(1)–(5) .... | Alternative Monitoring Method ..... | Procedures for Administrator to approve alternative monitoring. | Yes. |
| § 63.8(f)(6) ..... | Alternative to Relative Accuracy Test ..... | Procedures for Administrator to approve alternative relative accuracy tests for CEMS. | Yes, if CEMS used. |
| § 63.8(g)(1)–(4) ... | Data Reduction ..... | 1. COMS 6-minute averages calculated over at least 36 evenly spaced data points.<br>2. CEMS 1-hour averages computed over at least 4 equally spaced data points. | Yes, if CEMS or COMS used. |
| § 63.8(g)(5) ..... | Data Reduction ..... | Data that cannot be used in computing averages for CMS. | No; § 63.8690 specifies the CMS requirements. |
| § 63.9(a) ..... | Notification Requirements ..... | Applicability and State Delegation | Yes. |
| § 63.9(b)(1)–(5) ... | Initial Notifications ..... | 1. Submit notification 120 days after effective date.<br>2. Notification of intent to construct/reconstruct; notification of commencement of construct/reconstruct; notification of startup.<br>3. Contents of each | Yes. |
| § 63.9(c) ..... | Request for Compliance Extension ..... | Can request if cannot comply by date or if installed Best Achievable Control Technology (BACT)/Lowest Achievable Emission Rate (LAER). | Yes. |
| § 63.9(d) ..... | Notification of Special Compliance Requirements for New Source. | For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date. | Yes. |
| § 63.9(e) ..... | Notification of Performance Test ..... | Notify Administrator 60 days prior | Yes. |
| § 63.9(f) ..... | Notification of VE/Opacity Test ..... | Notify Administrator 30 days prior | Yes. |
| § 63.9(g) ..... | Additional Notifications When Using CMS ..... | 1. Notification of performance evaluation .....<br>2. Notification using COMS data<br>3. Notification that the criterion for use of alternative to relative accuracy testing was exceeded. | No; § 63.8692 specifies the CMS notification requirements. |
| § 63.9(h)(1)–(6) ... | Notification of Compliance Status ..... | 1. Contents.<br>2. Due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after.<br>3. When to submit to Federal vs. State authority | Yes. |

TABLE 7 TO SUBPART LLLLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL—Continued

| Citation | Subject | Brief description | Applies to subpart LLLLL |
|---|---|---|---|
| § 63.9(i) | Adjustment of Submittal Deadlines | Procedures for Administrator to approve change in dates when notifications must be submitted. | Yes. |
| § 63.9(j) | Change in Previous Information | Must submit within 15 days after the change | Yes. |
| § 63.10(a) | Recordkeeping/Reporting | 1. Applies to all, unless compliance extension<br>2. When to submit to Federal vs. State authority<br>3. Procedures for owners of more than 1 source. | Yes. |
| § 63.10(b)(1) | Recordkeeping/Reporting | 1. General Requirements<br>2. Keep all records readily available.<br>3. Keep for 5 years | Yes. |
| § 63.10(b)(2)(i)–(v). | Records related to Startup, Shutdown, and Malfunction. | 1. Occurrence of each of operation (process equipment).<br>2. Occurrence of each malfunction of air pollution equipment.<br>3. Maintenance on air pollution control equipment.<br>4. Actions during startup, shutdown, and malfunction. | Yes. |
| § 63.10(b)(2)(vi) and (x–xi). | CMS Records | 1. Malfunctions, inoperative, out-of-control<br>2. Calibration checks<br>3. Adjustments, maintenance | Yes. |
| § 63.10(b)(2)(vii)–(ix). | Records | 1. Measurements to demonstrate compliance with emission limitations.<br>2. Performance test, performance evaluation, and visible emission observation results.<br>3. Measurements to determine conditions of performance tests and performance evaluations. | Yes. |
| § 63.10(b)(2)(xii) | Records | Records when under waiver | Yes |
| § 63.10(b)(2)(xiii) | Records | Records when using alternative to relative accuracy test. | Yes. |
| § 63.10(b)(2)(xiv) | Records | All documentation supporting Initial Notification and Notification of Compliance Status. | Yes. |
| § 63.10(b)(3) | Records | Applicability determinations | Yes. |
| § 63.10(c)(1)–(6), (9)–(15). | Records | Additional records for CMS | No; § 63.8694 specifies the CMS recordkeeping requirements. |
| § 63.10(c)(7)–(8) | Records | Records of excess emissions and parameter monitoring exceeedances for CMS. | No; § 63.8694 specifies the CMS recordkeeping requirements. |
| § 63.10(d)(1) | General Reporting Requirements | Requirement to report | Yes. |
| § 63.10(d)(2) | Report of Performance Test Results | When to submit to Federal or State authority | Yes. |
| § 63.10(d)(3) | Reporting Opacity or VE Observations | What to report and when | Yes. |
| § 63.10(d)(4) | Progress Reports | Must submit progress reports on schedule if under compliance extension. | Yes. |
| § 63.10(d)(5) | Startup, Shutdown, and Malfunction Reports | Contents and submission | Yes. |
| § 63.10(e)(1), (2) | Additional CMS Reports | 1. Must report results for each CEM on a unit<br>2. Written copy of performance evaluation<br>3. Three copies of COMS performance evaluation. | Yes. |
| § 63.10(e)(3) | Reports | Excess emission reports | No; § 63.8693 specifies the reporting requirements. |
| § 63.10(e)(3)(i)–(iii). | Reports | Schedule for reporting excess emissions and parameter monitor exceedances (now defined as deviations). | No; § 63.8693 specifies the reporting requirements. |
| § 63.10(e)(3)(iv)–(v). | Excess Emissions Reports | 1. Requirement to revert to the frequency specified in the relevant standard if there is an excess emissions and parameter monitor exceedances (now defined as deviations).<br>2. Provision to request semiannual reporting after compliance for one year.<br>3. Submit report by 30th day following end of quarter or calendar half.<br>4. If there has not been an exceedance or excess emission (now defined as deviations), report content is a statement that there have been no deviations. | No; § 63.8693 specifies the reporting requirements. |

TABLE 7 TO SUBPART LLLLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL—Continued

| Citation | Subject | Brief description | Applies to subpart LLLLL |
|---|---|---|---|
| § 63.10(e)(3)(iv)–(v). | Excess Emissions Reports | Must submit report containing all of the information in § 63.10(c)(5)(13), § 63.8(c)(7)–(8). | No; § 63.8693 specifies the reporting requirements. |
| § 63.10(e)(3)(vi)–(viii). | Excess Emissions Report and Summary Report | 1. Requirements for reporting excess emissions for CMS (now called deviations).<br>2. Requires all of the information in § 63.10(c)(5)(13), § 63.8(c)(7)–(8). | No; § 63.8693 specifies the reporting requirements. |
| § 63.10(e)(4) | Reporting COMS data | Must submit COMS data with performance test data. | Yes, if COMS used. |
| § 63.10(f) | Waiver for Recordkeeping/Reporting | Procedures for Administrator to waive | Yes. |
| § 63.11 | Flares | Requirements for flares | Yes. |
| § 63.12 | Delegation | State authority to enforce standards | Yes. |
| § 63.13 | Addresses | Addresses where reports, notifications, and requests are sent. | Yes. |
| § 63.14 | Incorporation by Reference | Test methods incorporated by reference | Yes. |
| § 63.15 | Availability of Information | Public and confidential information | Yes. |

**Editorial Note:** Due to numerous errors this document is being reprinted in its entirety. It was originally printed in the **Federal Register** on Tuesday, April 29, 2003 at 68 FR 22975–23007.

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Federal Register

**Wednesday,**
**May 7, 2003**

## Part III

# Department of Agriculture

**Commodity Credit Corporation**

**7 CFR Part 1424**
**Bioenergy Program; Final Rule**

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Part 1424**

**RIN 0560–AG84**

## Bioenergy Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes a proposed rule to amend the existing regulations of the Commodity Credit Corporation (CCC) Bioenergy Program (program) in order to implement section 9010 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act). These changes include: modifying the definitions for biodiesel, eligible commodities, and ethanol; extending the program beyond Fiscal Year (FY) 2002; and allowing producers to enter into multi-year agreements for program payments. Additional changes, based on comments received on the proposed rule, include: modifying the conversion factor provisions, making biodiesel payments on a soybean basis, making biodiesel payments on all biodiesel production, basing program payments on market prices as of the 10th business day before the production quarter, and establishing a target notification period for changes to conversion factors. Under the rule, CCC will pay incentives to ethanol producers to increase their use of eligible agricultural commodities in an FY as compared to the corresponding period in the prior FY. For biodiesel, CCC will pay incentives to biodiesel producers for FY 2003 through FY 2005 on all biodiesel production from eligible agricultural commodities. For FY 2006, CCC will pay biodiesel producers incentives only on their increased biodiesel production.

**DATES:** Effective October 1, 2002. The FY 2003 and beyond sign-up period will end June 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jim Goff, Warehouse and Inventory Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0553, 1400 Independence Avenue, SW., Washington, D.C. 20250–0553, telephone (202) 720–5396 or e-mail address: *BioenergyProgram@wdc.fsa.usda.gov.* Persons with disabilities who require alternative means of communication (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule has been determined to be significant for the purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB). A summary of the cost-benefit assessment is included in the Background section explaining the 2002 Actions this rule will take.

**Small Business Regulatory Enforcement Fairness Act**

This rule will be submitted to Congress as required by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*) The rule has been determined not to be a major regulatory action. Thus, the 60-day delay required by section 801 of SBREFA for Congressional review is not applicable.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rule making for the subject matter of this rule.

**Executive Order 12372**

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. *See* the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Environmental Assessment**

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508); and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has concluded that the rule will not have any significant impacts upon the human environment as documented through the completion of a final environmental assessment (FEW) that is on file and available to the public in the Administrative Record at the address specified above by contacting the official named above. The FEW is also available electronically at *http://www.fsa.usda.gov/dafp/cepd/epb/nepa.htm.*

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule specifies that production will be eligible retroactively beginning October 1, 2002. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before bringing any action for judicial review.

**Executive Order 12612**

The Federalism implications of this rule are not sufficient to warrant preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of Government.

**Unfunded Mandates Reform Act of 1995**

This Rule contains no Federal mandates as defined in Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to sections 202 and 205 of UMRA.

**Paperwork Reduction Act**

The information collection reporting and recordkeeping requirements associated with this rulemaking have been approved by OMB and assigned control number 0560–0207. The proposed rule contained a notice for this information collection (67 FR 61565, October 1, 2002) as required by 5 CFR 1320.8 (d) (1). Two comments were received supporting the FY 2002 recordkeeping burden.

**Discussion of the Final Rule**

In November of 2000, USDA implemented a Bioenergy Program. The 2002 Act extended the program through FY 2006 and made several changes to the program. A proposed rule addressing these changes was published in the **Federal Register** on October 1, 2002 (67 FR 61565). Comments were accepted on the proposed rule until October 31, 2002.

*Comments on the Proposed Rule*

Responses to the proposed rule were received from 1,994 interested parties representing five different sectors as follows: 1,521 from individuals; 194 comments from 137 companies; 186 comments from 119 cooperatives; 48 comments from 44 trade organizations and special interest groups—mainly representing the American Soybean Association and the National Renderers Association; and 45 from State and local Governments. Most respondents made multiple comments.

*How Payments Are Determined*

Soybean or Soybean Oil Basis

CCC received 2,131 comments expressing concern about how CCC proposed to base program payments on

biodiesel production on soybean oil prices instead of on a raw soybean basis. A large majority, 1,635 respondents, wanted the program to increase rather than decrease payments; 296 opposed lowering the payment; 60 supported the proposed change; one stated payments should not be changed until after FY 2003; one supported higher overall payments for all biodiesel payments; and one suggested equal payment for all commodities based on soy oil. Related to the soybean payment issue, 197 respondents wanted increased program payments on animal fats and oils. The majority of respondents opposed proposed changes that revised biodiesel payment calculations, resulting in lower subsidy payments. Many respondents argued that the reduced biodiesel payments would not provide sufficient support to ensure biodiesel's affordability and maintain industry growth. Some also argued that CCC's Bioenergy Program was the primary federal program providing support to the biodiesel industry and was largely responsible for biodiesel becoming one of the fastest growing alternative energy sources. A number of respondents argued that changes in the proposed rule contradicted the intent of Congress and the stated goal of increasing bioenergy production.

CCC agrees with many of the respondents' comments on several factors: Program biodiesel payments should be increased not reduced; payments on production from animal fats and oils should be increased; and all biodiesel payments should be based on the FY 2002 soybean payment formula. Therefore, in the final rule, 7 CFR 1424.3 has been adjusted. Also, the proposed language in 7 CFR 1424.8(e) related to gross payable units has been moved to 7 CFR 1424.7. CCC will base all biodiesel payments on a soybean conversion and price, adjusted further by comparing the applicable oil or grease (animal fats and oils) price to the soy oil price. These changes will provide additional support to the biodiesel industry, maintain former payment levels for production from soybeans, and raise payments on production from animal fats and oils. This will reduce disparities between commodities in program payments for biodiesel production. The following table demonstrates how biodiesel payments will be determined taking into account the size-adjustment factor for large and small plants (which is statutory) and accounting for differences in feedstock to produce the eligible biodiesel.

Example:

| Item | Soybeans | Animal fats and oils | Mustard seed |
|---|---|---|---|
| Gross Payable Units (Bushels) | 714.30 | | |
| Size Factor (2.5 if under 65 million gallons per year total capacity or 3.5) | 2.50 | | |
| Adjusted Bushels (Gross Bushels/Size Factor) | 285.7 | | |
| Soybean PCP, Macon County, Illinois [1] | $5.59 | | |
| Soybean Gross Payment (Soybean PCP × Adjusted Bushels) | $1,597 | $1,597 | $1,597 |
| Soy Oil Price, Cents per pound [1] | | 22.59 | 22.59 |
| Feedstock Price, Cents per pound [1] | | 10.00 | 12.30 |
| Feedstock Factor (Feedstock Price/Soy Oil Price) | | 0.44 | 0.54 |
| Gross Program Payment (Soybean Gross Payment × Feedstock Factor) | $1,597 | $707 | $869 |

[1] Price on November 1, 2002.

No change is being made to the proposed rule's ethanol provisions in this area because there does not appear to be a similar need for adjustment.

Volume Basis for Payments

Forty-six respondents suggested program payments be made on all biodiesel production—base production (the previous FY volume) plus increased production this FY. One respondent suggested a two-tier payment with different payment rates used for base and increased biodiesel production, and another suggested a higher payment specifically for biodiesel. Respondents indicated that the biodiesel industry needs higher levels of support to maintain or increase industry growth.

CCC agrees with respondents that the biodiesel industry needs additional program support through higher payments. Consistent with the previous program, the 2002 Act requires the Secretary to make payments on the quantity of bioenergy produced during an FY that exceeds the quantity of bioenergy produced in the prior FY to date. Payment on increased production within a given FY may not provide sufficient incentives for long-term investments in the biodiesel industry. Currently, biodiesel is not cost-competitive with conventional diesel. The payment on FY to FY increases therefore implicitly subsidizes base production of biodiesel, making it cost-competitive. As a result, each successive FY that a producer participates in the program, the level of implicit support for biodiesel production declines as the base production grows larger relative to the yearly increase in production. Furthermore, this may create a potential inequity in the market as newer producers may receive implicitly higher subsidies and, as a result, be more cost-competitive than established producers. This suggests that previous provisions carried forward by reference, arguably, in the new legislation may, if continued without amendment, promote instability, which would impede the goal of fostering growth in the industry. This situation does not apply to the ethanol industry with its more mature market and other Federal and State support programs. In addition, basing a payment only on increased year-to-year biodiesel production may encourage participants to frustrate the goals of the program by increasing production one year, dropping it the next, then increasing it the following year in order to qualify for higher program payments. To avoid that result, CCC will use its original and continuing authority under section 5 of the CCC Charter Act, 15 U.S.C. 714c, as needed, and the program funding provided by the 2002 Act to make biodiesel production eligible for the program that would not be eligible solely under the bioenergy provisions of the 2002 Act by allowing payments on all of a producer's production and not just the increase in one year as compared with the preceding year. This support will be reduced each FY of the program to encourage industry independence from program payments. In no event will program funding exceed the $150 million per FY funding provided by the 2002 Act. Accordingly, among other changes, 7 CFR 1424.7 as added in the final rule provides that biodiesel may receive payments in the normal manner on production eligible under the 2002 Act (year-to-year increases) plus a payment on the remaining production at 50 percent of that rate in FY 2003, 30 percent in FY

2004, 15 percent in FY 2005, and 0 percent in FY 2006. No change is being made to the rules for ethanol in this regard because there is not the same need.

*Definition of Biodiesel*

CCC received 194 comments that supported the proposed change in the biodiesel definition and supported additional feedstocks being eligible for biodiesel production. Three respondents suggested adding an American Society for Testing and Materials standard as a requirement to the biodiesel definition. Four comments supported eligibility for all biodiesel uses, whether for fuel or not, and expansion of the biodiesel definition to include other bio-oil/solvent products. Finally, two respondents suggested the program make payments on lower grades of bio fuels that are used for industrial uses.

Section 9010(b)(3)(A) of the 2002 Act specifically defines biodiesel as ''a monoalkyl ester that meets the requirements of an appropriate American Society for Testing and Materials standard.'' The language of the 2002 Act indicates that the intent of Congress was that eligible biodiesel be that used for fuel use only. Therefore, no change is made to the biodiesel definition.

*Plant Capacity Conversion Factor*

Two respondents suggested that the program change from using 2.5 to 1.1 as a divisor for producers with total plant capacity of under 65 million gallons per year and from using 3.5 to 2.1 for producers with total plant capacity of 65 million gallons or more per year. However, sections 9010(b)(3)(B)(i) and (ii) of the 2002 Act specifically provide for use of the 2.5 and 3.5 factors, respectively. The regulations follow the statute.

*Refunds of Overpayments*

One respondent, in addressing the program's requirement for refunds when increased production is not maintained for the entire FY, suggested that the program should ''not force production of baseline if market cannot support the demand.''

Section 9010(b)(5) of the 2002 Act specifically states, ''If the total amount of payments that an eligible producer receives for an FY under this section exceeds the amount that the eligible producer should have received under this subsection, the eligible producer shall repay the amount of the overpayment to the Secretary, with interest (as determined by the Secretary).'' Accordingly, no change is made in this area. However, the change made with regard to basing program payments on all biodiesel production should minimize the impact of this requirement on program biodiesel participants.

*Determining Commodity Market Price*

One respondent suggested that the program, when making payment calculations, use the average commodity price for the production quarter rather than the price as of the last business day of the quarter in which production occurred. This issue, although it was the subject of one comment on this rule, has been an issue in program administration in both FY 2001 and FY 2002. Program participants in those years complained that their actual feedstock costs were established before production, not after, and that knowing the program payment rate earlier would help them price their contracts. To address this concern, without compromising the purpose of the program to try to approximate actual conditions, 7 CFR 1424.8(d)(2) has been changed to adopt for use the price of the commodity on the 10th business day before the start of the production quarter to establish program payments.

*Conversion Factors*

The rule resulted in 3,471 comments being received concerning conversion factors for eligible commodities. Of those, 1,829 respondents requested conversion factors be issued more timely, more predictably, and with more sensitivity toward the potential impact of changes after they are announced. An additional 1,640 respondents suggested that conversion factors be more predictable, not be subject to annual change, and codified in the regulations. One respondent recommended the conversion factor for all eligible commodities be codified in the regulations, and one respondent generally opposed removing conversion factors from the regulations.

These comments may have resulted from the proposed rule's suggested adoption of a new biodiesel soybean conversion factor. With the exception of the disparity in program payments for biodiesel made from soybeans and soy oil versus animal fats and oils, no complaints had been received in FY 2001 or FY 2002 on the program's conversion factors and no general discontent was expressed by participants about the factors used in those years. The broad list of potential program eligible commodities, many currently not used in bioenergy production, makes publication of a conversion factor for every eligible commodity unrealistic. In addition, as manufacturing processes improve and industry conversion factors improve, CCC needs to be able to reflect the bioenergy producer's true costs of production in a more timely fashion than that allowed by notice and comment rulemaking. From a review of the comments, it appears the real goal is for producers to be able to accurately estimate program payments when they contract future sales prices. To address that, 7 CFR 1424.8(e) has been changed to state, ''After FY 2003, changes to established conversion factors shall be announced in a press release issued by CCC 90 calendar days before the applicable FY's sign-up, to the extent practicable.'' This should give program participants a 120-day notification (90 days before sign-up plus 30-day sign-up period) before applicable production is produced. Conversion factors, as they are established, will also be posted to the program's Internet website.

*Source Used for Fats and Oil Market Prices*

Fifty-one respondents commented on this aspect of the program. Fifty suggested that CCC use the ''Jacobsen Fats and Oils Bulletin'' for oil feedstock prices without applicable Posted County Prices; one suggested CCC use the Chicago Board of Trade for all virgin crude oil prices with 5-year trade adjustments from that for cottonseed oil, corn oil, and canola oil prices. Respondents expressed the belief that the ''Jacobsen Fats and Oils Bulletin'' provided a more accurate market price for animal fats and oils than the USDA's ''Weekly National Carlot Meat Report,'' which was used by the program in FY 2002.

The program's regulations do not specify the source CCC will use for feedstock prices for eligible commodities without a Posted County Price—only that the market price will be ''as determined by CCC.'' For FY 2002, CCC used the U.S. Department of Agriculture's Agricultural Marketing Service's ''Springfield Report'' for corn oil prices and the USDA's ''Weekly National Carlot Meat Report'' for animal fats and oils prices. However, based on comments received, CCC has reviewed the data provided by the ''Jacobsen Fats and Oils Bulletin'' and has determined it does provide an accurate regional price for animal fats and oils. Therefore, CCC will use the ''Jacobsen Fats and Oils Bulletin'' to the extent possible for oil feedstock prices without a Posted County Price. This policy will also be announced in the FY 2003 sign-up press release announcement. 7 CFR 1424.8(d)(2)(ii) is changed to indicate that as a step in the final calculation of payments the biodiesel gross payment

will be determined for biodiesel made from eligible commodities that have a corresponding oil or grease market price, using the Posted County Price for soybeans for the county where the plant is located. If the biodiesel is made from soybeans or soy oil, this is the gross payment without a further feedstock adjustment (but subject to other possible adjustments). For biodiesel made from other than soy oil or soybeans, the applicable feedstock's oil or yellow grease (for animal fats and oils) market price, as determined by CCC, will be divided by the soy oil price published in the Agricultural Marketing Service's weekly ''Soybean Crush Report (Central Illinois (Decatur, Macon County, Illinois))'' for the applicable date. The resulting percentage will be multiplied by the soybean gross payment to determine the producer's gross payment eligibility subject to such other adjustments as provided in the regulations.

*Eligible Commodities and Fuels*

The proposed rule elicited 53 comments in this area. Of these, 50 supported the addition of animal fats and oils as program eligible commodities. Also, three suggested that CCC allow producers to use different eligible commodities during the same FY and not make producers commit at sign-up to which feedstocks will be used in bioenergy production.

CCC recognizes the difficulty producers have in forecasting which feedstocks will be used a year ahead of actual production. However, potential program payments must be estimated after that FY's sign-up is concluded to determine if a payment factor will be required to keep program expenditures within budgetary authority during the FY. CCC also recognizes that program projections for FY 2001 and FY 2002 were excessive compared to actual production. To address this, the bioenergy agreements will continue to request the maximum possible production by eligible commodity but will separately request the maximum total production increase. Producers will separately list the estimated production by eligible commodity and the total maximum increase from all eligible commodities. The total maximum increase reported will no longer be tied to the estimated production by eligible commodity. When added, the estimated production by commodity may now exceed the total maximum increase reported. This will allow producers to switch production between eligible commodities while still providing CCC the data necessary to project program costs based on eligible commodities being used.

*Producer Eligibility*

Fifty-four respondents felt that program payments should only be made to bona fide producers—not marketers. FSA reviews each applicant thoroughly for eligibility before they are approved for the program. To be eligible, a producer must have, among other requirements, risk of loss during the production process. A producer need not own the facility producing the fuel. All program payments are monitored and thorough, on-site examinations are conducted of all program participants' operations to verify program compliance. If noncompliance or over payments are discovered, repayments are required. In addition, program provisions are only applicable to a producer's bioenergy production activities—not to other business activities that producer may be involved in. However, to address this issue and also the issue of producers moving production between different plants between FY's to gain larger program payments, 7 CFR 1424.7(c) has been updated to state that there can only be one producer per plant and that when producers transfer all of their operations to a different plant, their prior FY's production will be the greater of the production at the plants they operated in the prior FY or the prior FY production at plants they are taking over in the next FY. Also, to help insure that the program accomplishes its goals, the rule provides that ''Otherwise, for purposes of computing whether a producer has increased production in the current year from the previous year, the determination will be made by comparing for the current year the producer's production figures from all locations in which the producer has an interest with, for the previous year the sum of (i) production at those locations by any person including, but not limited to, the producer, and (ii) additional production by the producer at any other location in that year. Also, as needed to avoid frustrating the goals of the program, the Executive Vice President of CCC may treat producers with common interests, common ownership, or common facilities or arrangements as the same producer. These provisions mirror provisions in the current rule and are provided for additional clarity.

Although FY 2003 sign-up will be held after October 1, 2002, FY 2003 bioenergy production beginning October 1, 2002 will be eligible for FY 2003 program payments.

*Miscellaneous Comments*

Twelve miscellaneous comments were received, with nine of those stating general support for the program. However, responses to the biodiesel issue also seem to indicate that those respondents would support the program even if biodiesel payments are reduced by the final rule. Another two respondents supported the program's current recordkeeping or paperwork burden. One respondent urged CCC to remove all support for continuance of current bioenergy programs and instead provide greater attention to supporting on farm fuel production for use in food production crops. The 2002 Act requires CCC to continue the program through FY 2006.

*Cost-Benefit Assessment*

The 2002 Act authorizes bioenergy program funding of up to $150 million per year for FY's 2003 through 2006. Section 743 of the Consolidated Appropriations Resolution, 2003, Public Law 108–7, limits FY 2003 payments to eligible bioenergy producers to 77 percent of the amount that those producers would otherwise earn under the program. The President's Budget for FY 2004 also proposes to limit the program to $100 million in FY 2004. The program was first implemented during FY 2001 and funded for FY 2001 and FY 2002 at $150 million each year. Payments have been well under the annual funding levels—FY 2001 payments totaled $40.7 million; FY 2002 payments totaled $78.7 million. The list of eligible commodities is expanded to include cottonseed and any animal byproduct (in addition to oils, fats, and greases) that may be used to produce bioenergy. However, because payments have been made only on corn, grain sorghum, wheat, soybeans, and animal fats and oils, it is difficult to forecast additional payments on the newly eligible commodities. Assuming that some of the new commodities do enter the program, the volume is likely to be small, and the outlay effects negligible. The number of participants receiving payments is expected to increase only slightly. Because of very strong incentives to increase ethanol production independent of the bioenergy program, FY 2003-ethanol production and payments are projected to increase sharply from FY's 2001 and 2002. Program payments for ethanol are expected to be highest in FY 2003 and then decline, because the rate of increase in production is projected to slow as California completes the transition to ethanol. Thus, the cost of the program is expected to be higher

initially than in FY's 2001 and 2002. Soybeans have been the predominant commodity for biodiesel payments to date. This is not likely to change substantially due to the expansion in eligible commodities. However, revisions in payment calculations will raise payment rates for animal fats and oils. This will increase incentives to use these commodities for biodiesel production.

**List of Subjects in 7 CFR Part 1424**

Administrative practice and procedure, Energy—bioenergy, Fuel additives, Gasohol, Oils and fats, Oilseeds, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 7 CFR part 1424 is amended as set forth below:

## PART 1424—BIOENERGY PROGRAM

■ 1. Part 1424 is revised to read as follows:

## PART 1424—BIOENERGY PROGRAM

Sec.



**Authority:** 7 U.S.C. 8108, 15 U.S.C. 714b and 714c.

### § 1424.1 Applicability.

This part sets out regulations for the Bioenergy Program (program). It sets forth, subject to the availability of funds as provided herein, or as may be limited by law, the terms and conditions a bioenergy producer must meet to obtain payments under this program and part from the Commodity Credit Corporation (CCC) for eligible bioenergy production. Additional terms and conditions may be set forth in the document required to request program benefits and in the program contract or agreement prescribed by CCC. This program is effective October 1, 2002, through September 30, 2006.

### § 1424.2 Administration.

This part shall be administered by the Executive Vice President, CCC, under the general direction and supervision of the Executive Vice President or designee. The Executive Vice President or a designee may authorize a waiver or modification of deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program, and may set such additional requirements as will facilitate the operation of the program. The funds available for the program shall be limited as set by this rule, otherwise announced by the Executive Vice President, CCC, or limited by law.

### § 1424.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration under this subpart.

*Agreement* means the Bioenergy Program Agreement or other form prescribed by CCC that must be executed for participation in the program.

*Application* means the application form prescribed by CCC or another form that contains the same terms, conditions, and information required.

*ATF* means the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice.

*Base production* means a biodiesel producer's current FY's biodiesel production from eligible commodities that is not an increase over biodiesel production in the previous FY to date.

*Biodiesel* means a mono alkyl ester manufactured in the United States and its territories that meets the requirements of an appropriate American Society for Testing and Materials Standard.

*Biodiesel* producer means a producer that produces and sells biodiesel who is also registered and in compliance with section 211 (b) of the Environmental Protection Agency Clean Air Act Amendment of 1990.

*Bioenergy* means ethanol and biodiesel produced from eligible commodities.

*Conversion factor* means:

(1) For ethanol production, a factor that converts the number of ethanol gallons back to commodity units as determined in the manner announced by CCC;

(2) For biodiesel production, the factor that will treat 1.4 gallons of biodiesel produced as having involved the consumption of one bushel of soybeans in any case when the feedstock was an eligible commodity that has a corresponding oil or grease market price; if there is none, then the factor shall be as determined and announced by CCC.

*Eligible commodity* means barley; corn; grain sorghum; oats; rice; wheat; soybeans; cotton seed; sunflower seed; canola; crambe; rapeseed; safflower; sesame seed; flaxseed; mustard seed; cellulosic crops, such as switchgrass and hybrid poplars; fats, oils, and greases (including recycled fats, oils and greases) derived from an agricultural product; and any animal byproduct (in addition to oils, fats and greases) that may be used to produce bioenergy, as CCC determines, that is produced in the United States and its territories.

*Eligible producer* means a bioenergy producer who meets all requirements for program payments.

*Ethanol* means anhydrous ethyl alcohol manufactured in the United States and its territories and sold either:

(1) For fuel use, rendered unfit for beverage use, produced at a facility and in a manner approved by ATF for the production of ethanol for fuel; or

(2) As denatured ethanol used by blenders and refiners and rendered unfit for beverage use.

*Ethanol producer* means a person authorized by ATF to produce ethanol.

*FSA* means the Farm Service Agency, USDA.

*FY* means the fiscal year beginning each October 1 and ending September 30 of the following calendar year.

*KCCO* means the FSA, Kansas City Commodity Office.

*Posted County Price* means the same Posted County Price for different locations as is used under other CCC commodity programs for marketing loan gains and other matters.

*Producer* is a legal entity (individual, partnership, cooperative, or corporation, etc.) who is a commercial bioenergy producer making application or otherwise involved under this program.

*Quarter* means the respective time periods of October 1 through December 31, January 1 through March 31, April 1 through June 30, and July 1 through September 30 of each FY, as applicable.

*Sign-up period* means the time period announced by CCC during which CCC will accept program agreements.

*USDA* means the United States Department of Agriculture.

### § 1424.4 General eligibility rules.

(a) An applicant must be determined eligible by KCCO and be assigned an agreement number.

(b) To be eligible for program payments, a producer must maintain records indicating for all relevant FY's and FY quarters:

(1) The use of eligible commodities in bioenergy production;

(2) The quantity of bioenergy produced from an eligible commodity by location;

(3) The quantity of eligible commodity used by location to produce the bioenergy referred to in paragraph (b)(2) of this section; and

(4) All other records, needed, or required by the agreement to establish program eligibility and compliance.

(c) A producer must allow verification by CCC of all information provided. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a producer being determined not eligible.

(d) For producers not purchasing raw commodity inputs, the production must equal or exceed that amount of production that would be calculated using the raw commodity inputs and the conversion factor set out in § 1424.3. A producer that purchases soy oil from a soybean crushing plant for further refinement into biodiesel must be able to prove to CCC's satisfaction both soy oil purchases and biodiesel production for the applicable quarter. Any special conversion factors needed will be the province of CCC and CCC alone and CCC's decision will be final.

(e) A producer must meet all other conditions set out in these regulations, in the agreement, or in other program documents.

**§ 1424.5 Agreement process.**

(a) To participate, an eligible producer must submit a signed agreement during the FY sign-up period. Agreements may be for single or multiple FY's. However, multiple FY agreements require producers to submit annual production estimate reports during each applicable FY sign-up period. Such reports must comply with the terms of the agreement and this part. In all cases, the accounting for compliance will be made on a per FY basis.

(b) Sign-up each FY will be held for 30 calendar days beginning for:

(1) FY 2003 on the date of publication of this rule;

(2) FY 2004 and beyond on August 1 of the FY before the applicable FY.

(c) After agreements are submitted:

(1) If determined eligible by KCCO, an agreement number will be assigned, and a notification will be mailed to the producer;

(2) If additional information is needed for KCCO to determine eligibility, the producer will be contacted as soon as practicable and requested to provide additional supporting documentation;

(3) If determined ineligible by KCCO, producers will be notified in writing that their agreement was rejected and the reason for the determination.

**§ 1424.6 Payment application process.**

(a) To apply for payments under this program during an FY, an eligible producer must:

(1) Submit an application or eligibility report for each quarter. Submit the last quarterly application or report of the FY within 30 calendar days of the end of the FY for which payment is requested. If the actual deadline is a non-workday, the deadline will be the next business day;

(2) Certify with respect to the accuracy and truthfulness of the information provided;

(3) Furnish CCC such certification, and access to such records, as CCC considers necessary to verify compliance with program provisions; and

(4) Provide documentation as requested by CCC of both the producer's net purchases of eligible commodities and net production of bioenergy compared to such production at all locations during the relevant periods. CCC may adjust the formulaic payments otherwise payable to the producer if there is a difference between the amount actually used and certified and the amount of increased commodity use calculated under the formula.

(b) After applications or reports are submitted, eligible producers:

(1) Shall submit such additional supporting documentation as requested by KCCO when additional information is needed to determine eligibility;

(2) Will be notified in writing of their ineligibility and reason for the determination, when the application is determined ineligible by KCCO; and

(3) Shall promptly refund payments when a refund to CCC is due. If a refund is not made promptly, CCC may establish a claim.

**§ 1424.7 Gross payable units.**

(a) For ethanol, producers will be eligible for payments on gross payable units for only their ethanol production from eligible inputs that exceeds, for the program year to date, their total comparable production at all locations as compared to the comparable portion of the previous year. Producers of ethanol are not eligible for base production payments. Producers shall not be paid twice for the same increase and any decline in relative production between quarters will require a comparable refund. For example, if at the end of the first quarter, a producer were to be paid for an increase of 500 gallons of ethanol, but at the end of the second quarter, that producer's year-to-date production was down to a net increase for the year of 450 gallons, then a refund would be due for the loss of the corresponding 50 gallons of net extra production. Repayment rates shall be based on previous payment rates. Unless otherwise determined by CCC, the extra ethanol production from eligible inputs will be converted to gross payable units by dividing the gallons of increased ethanol by the applicable conversion factor.

(b) Biodiesel producers will be eligible for payments on gross payable units for all biodiesel production from eligible inputs. For eligibility purposes there will be two kinds of payment: additional production payments (APP), and base production payments (BPP). Repayment rates shall be based on previous payment rates. Unless otherwise determined by CCC, gross payable units for biodiesel production from eligible inputs will be calculated as follows:

(1) For APP, by dividing the gallons of increased biodiesel by the biodiesel conversion factor of 1.4. APP payments will be made on increases as compared with the previous FY. Producers will not be paid twice for the same production. Failure to maintain year to date biodiesel production increases between quarters will require a comparable APP refund as specified below. That is, for example, if a producer were to be paid, at the end of the first quarter, for 500 gallons of increased biodiesel production, but by the end of the second quarter that producer's production, for the year to date, was only 450 gallons, then a refund of the APP premium would be due for the loss of the corresponding 50 gallons of net production increase.

(2) For BPP, which will be made on production not eligible for the APP, by dividing the base production by the biodiesel conversion factor of 1.4 and multiplying the result by 0.5 in FY 2003, 0.3 in FY 2004, 0.15 in FY 2005, or 0.0 (zero) in FY 2006 to determine base biodiesel production gross payable units.

(3) Adding the APP and BPP to determine biodiesel gross payable units.

(c) There shall only be one eligible producer per plant location.

(1) When producers move production from one plant to another between FY's, the prior FY's production for the producer for program payment calculations tied to increases in production shall be the greater of:

(i) The production at the plant operated by the producer in the prior FY, or

(ii) The production in the prior FY at the plant being taken over by the producer in the current FY.

(2) New producers who are taking over a plant with prior bioenergy

production shall assume that production history for program purposes. For example: in FY 2002, Producer A produced 1,000 gallons of bioenergy in plant 1 and Producer B produced 500,000 of bioenergy in plant 2. In FY 2003, Producer A assumes operation of plant 2; Producer B moves to plant 3, which was not in the program in FY 2002, but with FY 2002 production of 400,000 gallons from eligible commodities; and Producer C assumes operations of plant 1. In FY 2003, for program purposes solely based on these respective plants, Producer A would have a prior FY production of 500,000 gallons; Producer B would have a prior FY production of 500,000 gallons; and Producer C would have a prior FY production of 1,000 gallons. These examples would apply when a producer moves its entire operation from one plant to another. Otherwise, for purposes of computing whether a producer has increased production in the current year from the previous year, the determination will be made by comparing for the current year the producer's production figures from all locations in which the producer has an interest with, for the previous year, the sum of:

(i) Production at those locations by any person including, but not limited to, the producer, and

(ii) Additional production by the producer at any other location in that year.

(3) Also, as needed to avoid frustrating the goals of the program, the Executive Vice President of CCC may treat producers with common interests, common ownership, or common facilities or arrangements as the same producer.

**§ 1424.8 Payment amounts.**

(a) An eligible producer may be paid the amount specified in this section, subject to the availability of funds. Total available funds shall be as determined appropriate by CCC and shall not exceed $150 million in any of FY's 2003 through 2006.

(b) For agreements submitted during an FY sign-up, applicants must project increases in production. Based on expected commodity prices, using the formula set out in this section, submissions will be assigned an expected payment value. When the payment value of all timely submitted and validly executed agreements exceed available funding, CCC may, at its discretion, prorate payments to be made under such agreements based on total available funding.

(c) When the payment value of all timely submitted applications exceed available funding, CCC will prorate payments based on total available funding.

(d) Subject to this section and conditions in the agreement, a producer's payment eligibility shall be adjusted at the end of each quarter, and calculated as follows:

(1) Gross payable units, calculated and determined in accordance with § 1424.7, shall be converted to net payable units for producers whose annual bioenergy production is:

(i) Less than 65 million gallons, by dividing by 2.5;

(ii) Equal to or more than 65 million gallons, by dividing by 3.5;

(2) Net payable units calculated under paragraph (d)(1) of this section shall then be converted to a gross payment by multiplying net payable units by the per-unit value of the commodity as of the 10th business day before the start of the production quarter, determined as follows:

(i) For ethanol:

(A) For those agricultural commodities with an established Posted County Price, CCC will use the Posted County Price that CCC announces daily for the county in which the plant is located and applicable quality factors as CCC may establish.

(B) For agricultural commodities that CCC determines do not have Posted County Prices, CCC will use market data CCC determines to be appropriate for the applicable commodity.

(ii) For biodiesel made from:

(A) Soybeans or soy oil, CCC will use the Posted County Price for soybeans for the county where the plant is located.

(B) Eligible commodities other than soybeans or soy oil that have a corresponding oil or grease market price, CCC will first use the soybeans Posted County Price for Macon County, Illinois. Then, the applicable feedstock's oil or yellow grease (for animal fats and oils) market price, as determined by CCC, will be divided by the soy oil price published in the Agricultural Marketing Service's weekly ''Soybean Crush Report'' (Central Illinois (Decatur, Macon County, Illinois)) for the applicable date. The resulting percentage will be multiplied by the soybean gross payment to determine the producer's gross payment.

(C) Eligible commodities that do not have a corresponding oil or grease market price, in a manner as determined by CCC.

(3) The gross payment calculated under paragraph (d)(2) of this section shall be reduced to a net payment by multiplying the gross payment figure by the proration factor determined under paragraph (c) of this section.

(4) Subject to other provisions of this section, producers shall be paid the net current payment, if positive, determined for the quarter, subject to the requirements and refund provisions of this part.

(5) After the first quarter, adjustments shall be made based on changes in production. Refunds, when due, shall be due at the per unit values at which they were paid.

(6) For an FY, no producer may receive more than 5 percent of the available funding for this program.

(e) When the commodity's conversion factor has been established, that factor will, as practicable, be posted on the program's website.

(1) If the commodity's conversion factor is not determined when the sign-up is announced, the conversion factor will be provided in a letter to producers with accepted agreements to the extent practicable.

(2) After FY 2003, changes to established conversion factors shall be announced in a press release issued by CCC 90 calendar days before the applicable FY's sign-up, to the extent practicable.

**§ 1424.9 Reports required.**

Once an eligible producer has submitted a payment application, that producer shall file cumulative and per-plant information for each relevant bioenergy producing facility quarterly through the end of the applicable FY as specified by CCC or as otherwise needed to establish compliance with this part.

**§ 1424.10 Succession and control of facilities and production.**

A person who obtains a facility that is under contract under this part may request permission to succeed to the program agreement and CCC may grant such request if it is determined that permitting such succession would serve the purposes of the program. If appropriate, CCC may require the consent of the original party to such succession. Also, CCC may terminate a contract and demand full refund of payments made if a contracting party loses control of a facility whose increased production is the basis of a program payment or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

**§ 1424.11 Maintenance and inspection of records.**

For the purpose of verifying compliance with the requirements of this part, each eligible producer shall make available at one place at all reasonable times for examination by

representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the program that is within the control of such entity for not less than three years from the payment date.

**§ 1424.12 Appeals.**

(a) A participant subject to an adverse determination under this part may appeal by submitting a written request to: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, D.C. 20250–0550. The appeal must be delivered in writing to the Deputy Administrator or postmarked within 30 days after the date the Agency decision is mailed or otherwise provided to the participant. The Deputy Administrator may consider a late appeal if determined warranted by the circumstances.

(b) The regulations at 7 CFR part 11 apply to decisions made under this part.

(c) Producers who believe they have been adversely affected by a determination by the Agency must seek review with the Deputy Administrator before any other review may be requested within the Agency.

**§ 1424.13 Misrepresentation and scheme or device.**

(a) A producer shall be ineligible to receive payments under this program if CCC determines the producer:

(1) Adopted any scheme or device that tends to defeat the purpose of the program in this part;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of the bioenergy producer's actions, shall be refunded with interest together with such other sums as may become due, plus damages as may be determined by CCC.

(c) Any producer or person engaged in an act prohibited by this section and any producer or person receiving payment under this part shall be jointly and severally liable for any refund due under this part and for related charges.

(d) The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies that may apply.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions and rates prescribed in part 1403 of this chapter.

**§ 1424.14 Offsets, assignments, interestand waivers.**

(a) Any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the bioenergy, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found in part 1403 of this chapter shall be applicable to agreement payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this chapter.

(c) Interest charged by CCC under this part shall be at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such funds available. Such interest shall accrue from the date such payments were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations.

(d) CCC may waive the accrual of interest and/or damages if CCC determines that the cause of the erroneous determination was not due to any action of the bioenergy producer.

Signed in Washington, DC, on May 1, 2003.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 03–11359 Filed 5–5–03; 1:43 pm]

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